

UNITED STATES DEPARTMENT OF  
**COMMERCE**  
**NEWS**

WASHINGTON, D.C. 20230

E612-1  
BUREAU OF  
EXPORT  
ADMINISTRATION

FOR IMMEDIATE RELEASE:  
February 19, 1999  
www.bxa.doc.gov

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**ALCOA FINED \$750,000 BY COMMERCE DEPT.  
FOR ILLEGAL CHEMICAL SHIPMENTS**

WASHINGTON -- The Commerce Department's Under Secretary for Export Administration, William A. Reinsch, imposed a civil penalty of \$750,000 on Aluminum Company of America (ALCOA) for 100 violations of U.S. export regulations involving shipments of potassium fluoride and sodium fluoride.

The penalty results from Reinsch's affirming an administrative law judge's (ALJ) recommended findings in the case. The ALJ found that ALCOA exported potassium fluoride and sodium fluoride from the United States to Jamaica and Suriname on 50 separate occasions without obtaining the required Commerce Department export licenses. The violations occurred between June 1991 and December 1995. The ALJ also found that the company made false statements on export control documents in each shipment.

Potassium fluoride and sodium fluoride are controlled because they can be used to make chemical weapons. These chemicals were added to the Department's control list in March 1991, but ALCOA's export compliance program failed to recognize and incorporate the change. There was no indication that in this case the chemicals were used for weapons purposes.

Reinsch observed, "This penalty should send the message that there are significant advantages to having an internal compliance program that catches and reports problems quickly."

Reinsch's action imposes the maximum civil penalty of \$10,000 for each of the 50 shipping without a license violations. He also imposed a penalty of \$5,000 for each false statement.

Commerce's Export Administration Regulations provide that an administrative law judge administrative enforcement proceedings be conducted by who recommends an appropriate resolution of the case to the Under Secretary for Export Administration. The Under Secretary may affirm, modify, or vacate the ALJ's recommendation. In this case, Reinsch agreed with the findings but modified the penalties recommended by the ALJ.

Reinsch's order and the ALJ's recommendations will be printed in the *Federal Register*.

UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF EXPORT ADMINISTRATION  
WASHINGTON, D.C. 20230

In the Matter of:	)	
	)	Docket No. 97-BXA-20
ALUMINUM COMPANY OF AMERICA	)	
	)	DECISION AND ORDER
Respondent	)	
	)	

This is an export control administrative enforcement action here for final decision by the Under Secretary pursuant to §766.22 of the Export Administration Regulations (15 CFR §§730, *et seq.*). In a recommended decision and order dated December 21, 1998, the Honorable Parlen L. McKenna, Administrative Law Judge (ALJ), found that the Aluminum Company of America (ALCOA) committed 100 violations of the Export Administration Regulations and proposed a civil penalty of \$10,000 per violation for a total penalty of \$1,000,000. After reviewing the record of this case, including the briefs of the parties filed before me, I approve the ALJ's recommended findings and decision subject to my comments below.

I approve the ALJ's findings of fact and his conclusions of law. The ALJ correctly found that the former EAR §787.5(a) (15 CFR §787.5(a)) does not require a showing of knowledge or intent on the part of the respondent. The ALJ correctly determined that ALCOA committed 100 violations of the EAR.

With respect to the penalty, I generally agree with the ALJ's assessment of the factors that bear on the penalty. The ALJ is correct, for example, that the results in prior settlement

cases are not precedent for a penalty in this contested case. A willingness to settle on the government's terms is a concrete sign that a violator has admitted his wrongdoing and is making amends. That factor, which is not present in this case, can significantly mitigate the penalty. I also disagree with respondent's counsel that the result in this case will have a chilling effect on voluntary disclosures. ALCOA did not make a voluntary disclosure under the meaning of EAR §§764.5 in this case. This penalty should send the message that there are significant advantages to having in internal compliance program that catches and reports problems quickly.

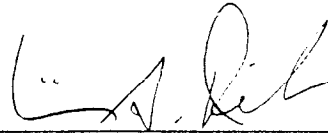
I have made my own assessment of the penalty in light of the findings and conclusions of the ALJ. I approve the ALJ's recommended penalty of \$10,000 for each of the 50 §787.6 violations for exporting without the required validated export license. With respect to the penalty for the false statement violations under §787.5(a), however, I am reducing the penalty to \$5,000 per violation. Accordingly, I approve a total penalty of \$750,000.

IT IS THEREFORE ORDERED that the Aluminum Company of America, having been found by a preponderance of the evidence to have committed 100 violations of the Export Administration Regulations, pay a civil penalty in the amount of \$10,000 for each of the 50 charges of violation of former §787.6 of the EAR and a civil penalty of \$5,000 for each of 50 charges of violation of former §787.5(a) of the EAR, for a total penalty of \$750,000.

IT IS FURTHER ORDERED that ALCOA shall pay the penalty assessed herein within 30 days from the date of this order and in accordance with the "Instructions for Payment of Civil Penalty" attached to the ALJ's recommended decision and order. Pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (1983 and Supp. 1998)), the civil penalty owed under this order accrues interest as more fully described in the attached notice, and,

if payment is not made by the due date specified herein, respondent will be assessed, in addition to interest, a penalty charge and an administrative charge, as more fully described in the attached notice.

IT IS FURTHER ORDERED that this decision and order and the recommended decision and order of the ALJ shall be served on the parties and published in the *Federal Register*.



William A. Reinsch  
Under Secretary  
for Export Administration

Entered this 19<sup>th</sup> day of February, 1999.



UNITED STATES OF AMERICA  
UNITED STATES DEPARTMENT OF COMMERCE

\* \* \* \* \*

In the Matter of:

Docket No: 97-BXA-20

ALUMINUM COMPANY OF AMERICA

RECOMMENDED  
DECISION AND ORDER

Respondent

\* \* \* \* \*

Appearance for Respondents:

Edward L. Rubinoff, Esq.  
Samuel C. Straight, Esq.  
Of Akin, Gump, Strauss, Hauer  
& Feld, L.L.P.

Michael D. Scott  
Aluminum Company of America

Appearance for Agency:

Jeffrey E.M. Joyner, Esq.  
Office of the Chief Counsel  
for Export Administration  
U.S. Department of Commerce

BEFORE: Hon. Parlen L. McKenna,  
United States Administrative Law Judge

PRELIMINARY STATEMENT

This is a civil penalty proceeding initiated pursuant to the legal authority contained under the Export Administration Act of 1979, as amended (50.U.S.C.A. §§ 2401-2420 (1991 & Supp. 1997) (hereinafter known as the "ACT"). It was conducted in accordance with the procedural requirements as found in 15 C.F.R. Parts 768-799 (1991-1995). Those Regulations were reorganized and restructured in 1997. The current Regulations are found at 15 C.F.R. Parts 730-744 (1997) which govern these proceedings.

On December 12, 1997, Aluminum Company of America ("ALCOA") was issued a charging letter by the Office of Export Enforcement, Bureau of

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Export Administration, United States Department of Commerce ("BXA") alleging that ALCOA committed 100 violations of the Export Administration Regulations ("EAR") between 1991 and 1995<sup>1</sup>. The alleged violations are as follows:

CHARGES 1-50: On 50 separate occasions between June 14, 1991, and December 7, 1995, ALCOA exported potassium fluoride and sodium fluoride from the United States to Jamaica and Surinam, without obtaining from BXA the validated export licenses required by Section 772.1(b) of the former regulations. By exporting U.S. - origin commodities to any person or to any destination in violation of or contrary to the provisions of the Act or any regulation, order, or license issued thereunder, ALCOA violated Section 787.6 of the former Regulations on 50 separate occasions, for a total of 50 violations.

CHARGES 51-100: In connection with the exports described in Charges 1-50 above, on 50 separate occasions between June 14, 1991, and December 7, 1995, ALCOA used Shipper's Export Declarations, as defined in Section 770.2 of the former regulations, on which it represented, potassium fluoride and sodium fluoride, qualified for export from the United States to Jamaica and Surinam under general license G-DEST. These chemicals required a validated license for export from the United States to both of those destinations. By making false or misleading statements of material fact, directly or indirectly, to a United States agency in connection with the use of export control documents to effect exports from the United States, ALCOA violated Section 787.5(a) of the former Regulations in connection with each of the 50 exports, for a total of 50 additional violations.

The maximum civil penalty assessment for each violation is \$10,000 (See 15 C.F.R. § 764.3(a)(1)). In addition to the penalty assessment, a denial of export privileges could be imposed (see Section 764.3(a)(2)) and the exclusion from practice (See Section 764.3(a)(3)). BXA proposed a civil penalty assessment of \$7,500 for each of the 50 violations of Section 787.6 of the former Regulations and \$7,500 for each of the 50 violations of Section 787.5(a) of the former Regulations, for a total civil penalty of \$750,000.

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<sup>1</sup> Each of these alleged violations were the result of separate and distinct shipments over a desperate four and one-half year period and were not based upon a continuing violation concept. The alleged violations are defined in the charging letter with reference to the EAR that were in effect at the time of the alleged incidents (See 15 C.F.R. Parts 768-799 (1991-1995)). These Regulations were issued pursuant to the Export Administration Act of 1979 and define the violations that BXA alleges occurred and are referred to hereinafter as the former regulations. Since that time, the regulations have been reorganized and restructured; the restructured regulations establish the procedures that apply to this matter. The Act expired on August 20, 1994. Executive Order 12924 (3 F.R.R. 1994 Comp. 917 (1995)), August 14, 1996 (3 C.F.R. 1996 Comp. 298 (1997)), and August 13, 1997 (62 Fed. Reg. 43629, August 15, 1997), continued the Regulations in effect under the International Emergency Economic Powers Act (currently codified at 50 U.S.C.A. §§ 1701-1706 (1991 and Supp. 1998)).

On February 9, 1998, a telephonic pre-hearing conference was held which included both parties and the undersigned. As a result of that conference, it was agreed by the parties that no hearing would be required since the facts of the case were not in dispute. Accordingly, a schedule was established for the submission of joint stipulations of fact and the filing of initial and reply briefs. Joint Stipulations were filed on March 27, 1998. ALCOA had previously filed its Answer to the Charging Letter on January 20, 1998. BXA Replied to ALCOA's Answer on May 1, 1998. On May 7, 1998, the undersigned issued an order permitting ALCOA to submit a response to BXA's Reply which was filed on May 13, 1998. In that Reply, Counsel for ALCOA took exception to BXA's assertion that the parties agreed during the February 9, 1998 prehearing conference that this matter could be resolved without a hearing because the facts were not in dispute. Subsequently, another telephonic conference was held between the parties and the undersigned. At that time, after listening to the arguments of counsel for ALCOA, it became clear to me that Mr. Rubinoff was only asking for Oral Argument and not an evidentiary hearing. Given the complex nature of this case and my desire to insure that ALCOA's due process rights were fully protected, I granted Oral Argument. Oral Argument in this matter was held in Washington, D.C. on Monday, July 20, 1998. A transcript of the Oral Argument was released thereafter and the matter is now ripe for decision.

The findings of fact and conclusions of law which follow are prepared upon my analysis of the entire record, and applicable regulations, statutes, and case law. Each submission of the parties, although perhaps not specifically mentioned in this decision, has been carefully reviewed and given thoughtful consideration.<sup>1</sup>

#### LAW AND REGULATION<sup>2</sup>

The United States, like many other industrialized nations, restricts the export of goods and services for reasons of national security. The United States Congress, under the President's signature, statutorily defined the penalties for violating such restrictions in Title 50 of the United States Code -- "War and National Defense" as follows:

##### § 2410 Violations

##### (a) In general

Except as provided in subsection (b) of this section, whoever knowingly violates or conspires to or attempts to violate any provision of this Act [sections 2401 to 2420 of this Appendix] or any regulation, order, or license issued thereunder shall be fined not more than five times the value of the exports involved or \$50,000, whichever is greater, or

<sup>1</sup> A list of the record evidence in this case is set forth in Appendix A, attached hereto.

<sup>2</sup> Because an evidentiary hearing was not held in this matter, a record was not developed which included exhibits that contained copies of each of the applicable laws and regulations. In order to aid the readers of this opinion, all applicable laws and regulations are set forth herein.

imprisoned not more than 5 years, or both.

(b) **Willful violations**

(1) Whoever willfully violates or conspires to or attempts to violate any provision of this Act [sections 2401 to 2420 of this Appendix] or any regulation, order, or license issued thereunder, with knowledge that the exports involved will be used for the benefit of, or that the destination or intended destination of the goods or technology involved is, any controlled country or any country to which exports are controlled for foreign policy purposes--

(A) except in the case of an individual, shall be fined not more than five times the value of the exports involved or \$1,000,000, whichever is greater; and

(B) in the case of an individual, shall be fined not more than \$250,000, or imprisoned not more than 10 years, or both.

(2) Any person who is issued a validated license under this Act [sections 2401 to 2420 of this Appendix] for the export of any good or technology to a controlled country and who, with knowledge that such a good or technology is being used by such controlled country for military or intelligence gathering purposes contrary to the conditions under which the license was issued, willfully fails to report such use to the Secretary of Defense--

(A) except in the case of an individual, shall be fined not more than five times the value of the exports involved or \$1,000,000, whichever is greater; and

(B) in the case of an individual, shall be fined not more than \$250,000, or imprisoned not more than 5 years, or both.

(3) Any person who possesses any goods or technology---

(A) with the intent to export such goods or technology in violation of an export control imposed under section 5 or 6 of this Act [section 2404 or 2405 of this Appendix] or any regulation, order, or license issued with respect to such control, or

(B) knowing or reason to believe that the goods or technology would be so exported,

shall, in the case of a violation of an export control imposed under section 5 [section 2404 of this Appendix] (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in paragraph (1) of this subsection and shall, in the case of a violation of an export control imposed under section 6

[section 2405 of this Appendix] (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in subsection (a).

(4) Any person who takes any action with the intent to evade the provisions of this Act [sections 2401 to 2420 of this Appendix] or any regulation, order, or license issued under this Act [sections 2401 to 2420 of this Appendix] shall be subject to the penalties set for in subsection (a), except that in the case of an evasion of an export control imposed under section 5 or 6 of this Act [section 2404 or 2405 of this Appendix] (or any regulation, order, or license issued with respect to such control), such person shall be subject to the penalties set forth in paragraph (1) of this subsection.

(5) Nothing in this subsection or subsection (a) shall limit the power of the Secretary to define by regulations violations under this Act [sections 2401 to 2420 of this Appendix].

**(c) Civil penalties; administrative sanctions**

(1) The Secretary (and officers and employees of the Department of Commerce specifically designated by the Secretary) may impose a civil penalty not to exceed \$10,000 for each violation of this Act [sections 2401 to 2420 of this Appendix] or any regulation, order or license issued under this Act [sections 2401 to 2420 of this Appendix], either in addition to or in lieu of any other liability or penalty which may be imposed, except that the civil penalty for each such violation involving national security controls imposed under section 5 of this Act [section 2404 of this Appendix] or controls imposed on the export of defense articles and defense services under section 38 of the Arms Export Control Act [22 U.S.C.A. § 2778] may not exceed \$100,000.

(2)(A) The authority under this Act [sections 2401 to 2420 of this Appendix] to suspend or revoke the authority of any United States person to export goods or technology may be used with respect to any violation of the regulations issued pursuant to section 8(a) of the Act [section 2407(a) of the Appendix].

(B) Any administrative sanction (including any civil penalty or any suspension or revocation of authority to export) imposed under this Act [sections 2401 to 2420 of this Appendix] for a violation of the regulations issued pursuant to section 8(a) of this Act [section 2407(a) of this Appendix] may be imposed only after notice and opportunity for an agency hearing on the record in accordance with sections 554 through 557 of title 5, United States Code [5 U.S.C.A. §§ 554 to 557].

(C) Any charging letter or other document initiating administrative proceedings for the imposition of sanctions for violations of the regulations issued pursuant to section 8(a) of

the Act [section 2407(a) of the Appendix] shall be made available for public inspection and copying.

(3) An exception may not be made to any order issued under this Act [sections 2401 to 2420 of this Appendix] which revokes the authority of a United States person to export goods or technology unless the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate are first consulted concerning the exception.

(4) The President may by regulation provide standards for establishing levels of civil penalty provided in this subsection based upon the seriousness of the violation, the culpability of the violator, and the violator's record of cooperation with the Government in disclosing the violation.

United States Department of Commerce Regulations  
15 C.F.R. § 787 -- Enforcement

§ 787.1 Sanctions

(a) Criminal (1) Violations of Export Administrative Act (i) General. Except as provided in paragraph (a)(1)(ii) of this section, whoever knowingly violates or conspires to or attempts to violate the Export Administration Act ("the Act") or any regulation, order, or license issued under the Act is punishable for each violation by a fine of not more than five times the value of the exports involved or \$50,000, whichever is greater, or by imprisonment for not more than five years, or both.

(ii) Willful violations. (A) Whoever willfully violates or conspires to or attempts to violate any provision of this Act or any regulation, order, license issued thereunder, with knowledge that the exports involved will be used for the benefit of or that the destination or intended destination of the goods or technology involved is any controlled country or any country to which exports are controlled for foreign policy purposes, except in the case of an individual, shall be fined not more than five times the value of the export involved or \$1,000,000 whichever is greater; and in the case of an individual shall be fined not more than \$250,000, or imprisoned not more than 10 years, or both.

(B) Any person who is issued a validated license under this Act for the export of any goods or technology to a controlled country and who with the knowledge that such export is being used by such controlled country for military or intelligence gathering purposes contrary to the conditions under which the license was issued, willfully fails to report such use to the Secretary of Defense, except in the case of an individual, shall be fined not more than five times the value of the exports involved or \$1,000,000, whichever is greater; and in the case of an individual, shall be fined not more than \$250,000, or imprisoned not more than five years, or both.

(C) Any person who possesses any goods or technology with the intent to export such goods or technology in violation of an export control imposed under section 5 or 6 of the Act or any regulation, order, or license issued with respect to such control, or knowing or having reason to believe that the goods or technology would be so exported, shall, in the case of a violation of an export control imposed under section 5 of the Act (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in paragraph (a)(1)(ii)(A) of this section and shall, in the case of a violation of an export control imposed under section 6 of the Act (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in paragraph (a)(1)(I) of this section.

(D) Any person who takes any action with the intent to evade the provisions of this Act or any regulation, order, or license issued under this Act shall be subject to the penalties set forth in paragraph (a)(1)(i) of this section, except that in the case of an evasion of an export control imposed under section 5 or 6 of the Act (or any regulation, order, or license issued with respect to such control), such person shall be subject to the penalties set forth in paragraph (a)(1)(ii)(A) of this section.

(2) Violations of False Statements Act. The submission of false or misleading information or the concealment of material facts, whether in connection with license applications, boycott reports, Shipper's Export Declarations, Investigations, compliance proceedings, appeals, or otherwise, is also punishable by a fine of not more than \$10,000 or by imprisonment for not more than five years, or both, for each violation (18 U.S.C. 1001).

(b) Administrative<sup>1</sup> - (1) Denial of export privileges, Whoever violates any law, regulation, order, or license relating to export controls or restrictive trade practices and boycotts is also subject to administrative action which may result in suspension, revocation, or denial of export privileges conferred under the Export Administration Act (See § 788.3 et seq).

(2) Exclusion from practice. Whoever violates any law, regulation, order, or license relating to export controls or restrictive trade practices and boycotts is further subject to administrative action which may result in exclusion from practice before the Bureau of Export Administration (See § 790.2(a)).

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<sup>1</sup> Violations of the Act or regulations, or any order or license issued under the Act, may result in the imposition of administrative sanctions, and also or alternatively of a fine or imprisonment as described in paragraph (a) of this section, seizure or forfeiture of property under section 11(g) of this Act or 22 U.S.C. § 401, or any other liability or penalty imposed by law. The U.S. Department of Commerce may compromise and settle any administrative proceeding brought with respect to such violations.

(3) Civil penalty. A civil penalty may be imposed for each violation of the Export Administration Act or any regulation, order or license issued under the Act either in addition to, or instead of, any other liability or penalty which may be imposed. The civil penalty may not exceed \$10,000 for each violation except that the civil penalty for each violation involving national security controls imposed under section 5 of the Act may not exceed \$100,000. The payment of such penalty may be deferred or suspended, in whole or in part, for a period of time that may exceed one year. Deferral or suspension shall not operate as a bar in the collection of the penalty in the event that the conditions of the suspension or deferral are not fulfilled. When any person fails to pay a penalty imposed under this paragraph (b)(3), civil action for the recovery of the penalty may be brought in the name of the United States, in which action the court shall determine de novo all issues necessary to establish liability. Once a penalty has been paid, no action for its refund may be maintained in any court.<sup>1</sup>

(4) Seizure. Commodities or technical data which have been, are being, or are intended to be, exported or shipped from or taken out of the United States in violation of the Export Administration Act or of any regulation, order, or license issued under the Act are subject to being seized and detained, as are the vessels, vehicles, and aircraft carrying such commodities or technical data are subject to forfeiture (50 U.S.C. app. 2411(g)) (22 U.S.C. 401, see § 786.8(b)(6)).

#### 15 C.F.R. § 772.1 (b) Exports Requiring Validated Licenses

No commodity or technical data subject to the Export Administration Regulations may be exported to any destination without a validated license issued by the Office of Export Licensing, except where the export is authorized by a general license or other authorization by the Office of Export Licensing.

#### 15 C.F.R. § 787.5 Misrepresentation and concealment of facts; evasion.

(a)(1) Misrepresentation and Concealment. No person may make any false or misleading representation, statement, or certification, or falsify or conceal any material fact, whether directly to the Bureau of Export Administration, any Customs Office, or an official of any other United States agency, or indirectly to any of the foregoing through any other person or foreign government agency or official...

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<sup>1</sup> The U.S. Department of Commerce may refund the penalty at any time within two years of payment if it is found that there was a material error of fact or of law.



## 15 C.F.R. § 787.6 Export, diversion, reexport, transshipment.

Except as specifically authorized by the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may export, dispose of, divert, direct, mail or otherwise ship, transship, or reexport commodities or technical data to any person or destination or for any use in violation of or contrary to the terms, provisions, or conditions of any export control document, any prior representation, any form of notification of prohibition against such action, or any provision of the Export Administration Act or any regulation, order, or license issued under the Act.

## 15 C.F.R. § 774.1 Reexport of U.S. - made equipment

Unless the reexport of a commodity previously exported from the United States has been specifically authorized in writing by the Office of Export, Licensing prior to its reexport ..., no person in a foreign country (including Canada) or in the United States may;

(a) Reexport such commodity...from the authorized country(ies) of ultimate destination ....

JOINT STIPULATIONS OF FACT

Aluminum Company of America (ALCOA) and the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA) stipulated to the following facts:

1. ALCOA is a corporation organized under the laws of Pennsylvania with its principal offices located at 425 Sixth Avenue, ALCOA Building, Pittsburgh, Pennsylvania 15219.
2. ALCOA is one of the world's leading producers of aluminum and a primary participant in all segments of the industry mining, refining, smelting, fabricating, and recycling.
3. ALCOA is one of the world's largest producers of alumina, which is both an intermediate product in the production of aluminum and an important chemical product in itself.
4. During the period June 14, 1991 through December 7, 1995 ("the review period"), ALCOA, through its subsidiary ALCOA Minerals of Jamaica ("AMJ"), and the Government of Jamaica, through its subsidiary Clarendon Alumina Productions ("CAP"), owned an alumina refinery

in Clarendon Parish, Jamaica. CAP and AMJ each owned a 50% interest in the alumina refinery.

5. Jamalco is a joint operation, located in Kingston, Jamaica, governed by a Joint Venture Agreement between AMJ and CAP dated March 1, 1988. The joint venture is governed by an eight member Executive Committee, four members each from CAP and AMJ. Article 5 of the Joint Venture Agreement provides that the Executive Committee will appoint a manager who will have full rights and responsibilities to manage and control the day to day conduct of the operations of the joint venture. Article 5 further requires that AMJ be appointed as the Manager. AMJ has acted as Manager at all times since 1988.

6. Prior to December 30, 1994, ALCOA operated mining, refining, and smelting operations in Suriname (Suralco). As of December 30, 1994, all of ALCOA's bauxite, alumina and alumina-based chemicals businesses, including Suralco, were restructured and combined into ALCOA Alumina and Chemicals, L.L.C. Subsequently, Suralco has been owned 98 % by ALCOA Alumina and Chemicals, L.L.C., and 2 % by ALCOA Caribbean Alumina Holdings, L.L.C, each of which is owned 60% by ALCOA and 40% by WMC Limited, an Australian corporation.

7. Since 1984, the alumina refinery in Paranarn, Suriname has been co-owned by Suralco and an affiliate of Billiton N.V., a Dutch corporation, and has been operated pursuant to a Refining Joint Venture Operating Agreement dated March 14, 1984, as amended. In accordance with Article 5.02 of the Refining Joint Venture Operating Agreement, Suralco was in 1984 appointed, and has since then acted as Manager of the Paranarn refinery.

8. During the review period, the refineries in Jamaica and Suriname used potassium fluoride as the key reagent for refining alumina from bauxite, the raw ore for aluminum.

9. During the review period, the water treatment facility in Suriname used sodium fluoride to treat drinking water. Suralco's water treatment facility was located in the powerhouse which supplied electricity to and was located at Suralco's bauxite mine in Moengo, Suriname. In March 1994, Suralco sold its Moengo powerhouse and water treatment facility to Energie Bedrijven Suriname (EBS), a utility company owned by the government of Suriname. In conjunction with the sale of the powerhouse and water treatment facility,

Suralco agreed to continue operating the water treatment facility for one year. Consequently, Suralco personnel were on-site at the water treatment facility at all times when ALCOA's Export Supply Division shipped sodium fluoride to Suralco. Also as part of the powerhouse sale agreement, Suralco agreed to provide the chemicals used in the water treatment facility for a period of two years following the sale.

10. During the review period, logistical support for Jamalco and Suralco was provided by ALCOA's Export Supply Division ("ESD"), located in New Orleans, Louisiana

11. During the review period, Jamalco and Suralco purchased certain items from a scheduled buying list, while other items were purchased only as required in specific instances.

12. During the review period, ESD received requisitions from Jamalco and Suralco, located suppliers, purchased products, and shipped the requested items to Jamalco and Suralco.

13. During the review period, ESD prepared all export and shipping documentation for shipments to Jamalco and Suralco.

14. ESD was responsible for determining the applicable export licensing requirements for items ordered by Jamalco and Suralco during the review period.

15. For each shipment of specially-ordered items to Jamalco and Suralco during the review period, the export compliance procedures in place provided that ESD was to review the Export Administration Regulations to determine the applicable export licensing requirement.

16. On several occasions during the review period, ESD obtained validated licenses from BXA to export specially-ordered items, such as computers, to Jamalco and Suralco.

17. By contrast, once ESD made an initial determination of the export licensing requirements for items on the scheduled buying list, ESD did not thereafter review the Export Administration Regulations for each subsequent shipment of "scheduled buying lists" goods to Jamalco and Suralco.

18. Both potassium fluoride and sodium fluoride were on ESD's scheduled buying list for Jamalco and Suralco

both before and during the review period.

19. Both potassium fluoride and sodium fluoride were routinely purchased against periodic requisitions regularly submitted by Jamalco and Suralco both before and during the review period.

20. Under the export compliance procedures in place during the review period, ESD did not perform a complete export compliance check for each shipment of potassium fluoride and sodium fluoride to Jamalco and Suralco.

21. Prior to March 13, 1991, exporters were not required to obtain from BXA a validated license to export potassium fluoride and sodium fluoride from the United States to Jamaica and Suralco.

22. Prior to March 13, 1991, ESD lawfully exported potassium fluoride and sodium fluoride on a regular basis to Jamalco and Suralco under general license authority.

23. On March 13, 1991, through a notice published in the Federal Register, entitled Expansion of Foreign Policy Controls on Chemical Weapons Precursors (56 Fed. Reg 10756), the Department of Commerce amended the Commerce Control List of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1997)),<sup>2</sup> "by expanding the number of countries for which a validated license is required for 39 precursor chemicals. Under the rule, the 39 chemicals will require a validated license for export to all destinations except NATO member countries, Australia, Austria, Ireland, Japan, New Zealand, and Switzerland." Potassium fluoride and sodium fluoride were included on the list of 39 chemicals subject to the regulatory change.

24. As potassium fluoride and sodium fluoride were routinely ordered by Jamalco and Suralco, ESD failed to attach any significance to the March 1991 amendment, missed the regulatory change, and continued to export these commodities to the refineries during review period without first obtaining from BXA the validated export license required under the Regulations.

25. During the review period, ESD made 47 shipments of potassium fluoride to Jamalco and Suralco without

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<sup>2</sup> At the time BXA promulgated this rule, the Export Administration Regulations were found at 15 C.F.R. Parts 768-799 (1991). Since that time, the Regulations have been reorganized and restructured.

validated license. The total value of these shipments was \$104,637.00.

26. During the review period, ESD made three shipments of sodium fluoride to Suralco without validated licenses. The total value of these shipments was \$6,603.00

27. During the review period, ESD used Shippers Export Declarations ("SEDs"), an export control document as defined in the Export Administration Regulations, to effect the export of potassium fluoride and sodium fluoride from the United States to Jamaica and Suriname.

28. With eight exceptions, ALCOA identified the chemicals shipped to Jamalco and Suralco on the SEDs by their specific nomenclature.

29. As a result of missing the March 1991 regulatory amendment, ALCOA, during the review period, indicated on each SED used for the export of the chemicals from the United States to Jamaica and Suriname that the goods qualified for export from the United States to Jamaica and Suriname under general license G-DEST, when in fact the chemicals required a validated license for export from the United State to both destinations.

30. ESD had no intent to make any false or misleading statements on the SEDs accompanying the shipments of potassium fluoride and sodium fluoride to Jamalco and Suralco during the review period.

31. The exports of potassium fluoride and sodium fluoride during the review period were made to countries that are not suspected of engaging in illicit weapons development

32. All of the potassium fluoride and sodium fluoride shipped by ESD to Jamalco and Suralco during the review period was completely consumed on the premises of the refinery and water treatment facilities in Jamaica and Suriname.

33. Once BXA informed ALCOA that ESD had shipped potassium fluoride and sodium fluoride to Jamaica and Suriname during the review period without the required validated export license, ALCOA cooperated fully with BXA in its investigation.

34. After BXA brought to ALCOA's attention the regulatory change imposing a validated licensing

requirements on exports of potassium fluoride and sodium fluoride to Jamaica and Suriname, ALCOA applied for, and BXA granted, validated license for shipments of potassium fluoride to Jamaica and Suriname made after the review period.

35. During the review period, there was a presumption of approval, on a case-by-case basis, for license to export potassium fluoride and sodium fluoride from the United States to Jamaica and Suriname.

36. Prior to the initiation of the investigation by BXA, ALCOA retained outside counsel and experts to assist in improving and strengthening ALCOA's export compliance procedures.

37. As a result of these efforts, ALCOA developed and implemented a new export compliance program that includes an export compliance manual (with specific procedures and policies applicable to all exports by ALCOA), training seminars, instructional videos, and other measures.

38. 15 C.F.R. § 787.4(a) provides:

(a) No person may order, buy, receive, conceal, store, use, sell, loan, dispose of, transfer, transport, finance, forward, or otherwise service, in whole or in part, any commodity or technical data exported or to be exported from the United States or which is otherwise subject to the Export Administration Regulations, with knowledge or reason to know that a violation of the Export Administration Act or any regulation, order, or license has occurred, is about to occur, or is intended to occur with respect to any transaction.

The parties stipulated at the Oral Argument that this regulation does not have a strict liability trigger since it contains a knowledge element (TR. 33).

39. 15 C.F.R. § 787.4(b) provides:

(b) No person may possess any commodities or technical data, controlled for national security or foreign policy reasons under section 5 or 6 of the Act:

- (1) With the intent to export such commodities or technical data in violation of the Export Administration Act or any regulation, order, license or other authorization under the Act, or;
- (2) Knowing or having reason to believe that the

commodities or technical data would be so exported.

The parties stipulated at the Oral Argument that this regulation does not have a strict liability trigger since it contains a knowledge or intent element (TR-33).

40. 15 C.F.R. § 787.5(b) provides:

(b) Evasion. No person may engage in any transaction or take any other action, either independently or through any other person, with intent to evade the provision of the Act, or any regulation, order, license or other authorization issued under the Act.

The parties stipulated at the Oral Argument that this regulation does not have a strict liability trigger since it contains a knowledge or intent element (TR-33).

#### FINDINGS OF FACT<sup>1</sup>

1. The Respondent and BXA entered into forty (40) Joint Stipulations of Fact which are set forth above. Each and every one of those Joint Stipulations of Fact are hereby accepted by the undersigned and adopted as a Finding of Fact in this proceeding.

2. Aluminum Company of America (ALCOA), the Respondent, was at all times herein a Corporation authorized to and doing business in the United States. As such, the Respondent clearly fails within the definition of "person" set forth in 15 C.F.R. § 770.2; currently codified at 15 Code of Federal Regulations, Parts 730-774 (1997), issued the Regulations 768-799 (1991-1995) hereinafter known as the former Regulations (See Joint Stipulations of Fact Nos. 1, 2, and 3).

3. Potassium fluoride is the key reagent used during the refining of alumina from its bauxite ore. Bauxite is crushed and mixed with a caustic soda solution. This solution dissolves the alumina present in the bauxite. Potassium fluoride is used to determine the level of dissolved alumina in the caustic solution. Only a small amount of potassium fluoride is used per metric ton of bauxite processed (See Respondent's Answer dated January 20, 1998, page 2).

4. Sodium fluoride was used by the ALCOA facility in Suriname to treat drinking water for people living in the Suralco refinery area. All of the sodium fluoride exported from the United States to Suriname was used by this ALCOA subsidiary facility and was fully consumed in the water treatment process. ALCOA sold the water treatment facility to the government of Suriname in July 1994. Therefore, Suralco no longer uses any sodium fluoride (See Respondent's Answer dated January 20, 1998, page 3).

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<sup>1</sup> Neither Respondent nor Agency submitted Proposed Findings of Fact. As a result, no rulings are made thereon.

5. All of the potassium fluoride and Sodium Fluoride exports at issue in this case were sent to ALCOA's refinery operations in Jamaica (Jamalco) and Suriname (Suralco). These refineries are located near bauxite mines. Bauxite is the raw ore for aluminum. The refineries process the bauxite so as to extract aluminum oxide (alumina), which becomes the basic feedstock for ALCOA's metal and chemical businesses. Both refineries were directly controlled by ALCOA during the period June 14, 1991 through December 7, 1995 (See Respondent's Answer dated January 20, 1998, page 2).

6. Prior to March 13, 1991, validated licenses were not required under the EAR for exports of potassium fluoride and sodium fluoride either to Jamaica or Suriname. Therefore, prior to that date, ESD had lawfully exported these products to the refineries under the EAR general license authority. However, on March 13, 1991, the Department of Commerce amended the Commerce Control List of the EAR by expanding the number of countries for which a validated license was required for exports of thirty-nine (39) commodities.

7. Logistical support for the ALCOA refineries in Jamaica and Suriname was provided by ALCOA's Export Supply Division ("ESD"), located in New Orleans, LA. Through ESD, the refineries regularly purchased certain items from a scheduled buying list, while other items were purchased only as required in specific instances. In this capacity, ESD purchased everything from office surplus and repaired parts to replacements for equipment and operating supplies. ESD received requisitions from the refineries, located U.S. suppliers for the requested product, purchased the products, and shipped them to the refineries. ESD prepared all export and shipping documentation for shipments to the refineries (See Respondent's Answer dated January 20, 1998, page 3).

8. ESD's sole function was to support the Jamalco and Suralco refineries. It annually handled approximately 25,000 transactions involving 100,000 different items, with a total value of over \$125 million. Before, during and after the time periods in question, ESD was aware of the EAR, and sought and obtained validated export licenses for a variety of products, including computer systems and related equipment (See Respondent's Answer dated January 20, 1998, page 3).

9. Both potassium fluoride and sodium fluoride were on ESD's scheduled buying list for the refineries both before and during the time periods in question and were, in fact, purchased against requisitions submitted by Jamalco and Suralco. Indeed, during the time period in question, ESD made forty-seven (47) shipments of potassium fluoride to the Jamalco and Suralco refineries, and three (3) shipments of sodium fluoride to the Suralco refinery (See Respondent's Answer dated January 20, 1998, page 3).

10. On 50 separate occasions between June 14, 1991, and December 7, 1995, ALCOA exported potassium fluoride and sodium fluoride from the United States to Jamaica and Surinam, without obtaining from BXA the



validated export licenses required by Section 772.1(b) of the former regulations. By exporting U.S. - origin commodities to any person or to any destination as set forth in Section 772.1(b) of the former regulations, ALCOA violated Section 787.6 of the former regulations on 50 separate occasions, for a total of 50 separate violations (See Respondent's plea of "Admit" to charges 1-50 in its January 1998 Answer, page 5).

11. On 50 separate occasions between June 14, 1991, and December 7, 1995, ALCOA used Shipper's Export Declarations as defined in Section 770.2 of the former Regulations, on which it represented that potassium fluoride and sodium fluoride, qualified for export from the United States to Jamaica and Surinam under general license G-DEST. Contrary to ALCOA's Shippers Export Declarations, the export of potassium fluoride and sodium fluoride to Jamaica and Surinam required a validated license to both of those destinations and did not qualify for export under general license G-DEST (See Respondent's plea of "Admit" to finding of Fact No. 9, above; and Joint Stipulation of Fact No. 29, above).

12. Based on the Respondent's admitted actions set forth in Finding of Fact No. 10, above, ALCOA violated 15 C.F.R. § 787.5 (a) of the former regulations by making "false or misleading representation[s], statement[s], or certification[s]" of material fact to a United States agency in connection with the use of export control documents required under 15 C.F.R. § 772.1(b) to effectuate the export of potassium fluoride and sodium fluoride from the United States to Jamaica and Suriname (See, legal discussion below).

#### CONCLUSIONS OF LAW

1. That 15 C.F.R. § 787.5(a) of the former regulations does not require "knowledge" or "intent" in order for a finding that the Respondent violated said regulation. Liability and administrative sanctions are imposed on a strict liability basis once the Respondent commits the proscribed act;

2. That the Respondent, Aluminum Company of America, committed 50 violations of 15 C.F.R. § 787.5(a) during the period from June 14, 1991 through December 7, 1995 when potassium fluoride and sodium fluoride were exported from the United States to Jamaica and Surinam without obtaining validated export licenses required by 15 C.F.R. § 772.1(b);

3. That the Respondent, Aluminum of Company of America, committed 50 violations of 15 C.F.R. § 787.6 during the period of June 14, 1991 through December 7, 1995 by making false and misleading statements of material fact to a United States agency in connection with the use of export control documents;

4. That based upon the entire record in this matter, the appropriate civil penalty for each of the 100 violations is \$10,000 for a total of \$1,000,000. The record does not support the suspension of part of the civil penalty assessment on probation.

# DISCUSSION

Based upon the stipulations of the parties, there are only two questions to be answered in this proceeding:

- I) Is "knowledge" or "intent" a necessary element of a violation of § 787.5(a) of the former regulations? and
- II) What is the appropriate level of sanctions in this case?

I. SECTION 787.5(a) OF THE FORMER REGULATIONS DOES NOT REQUIRE "KNOWLEDGE" OR "INTENT" IN ORDER FOR A FINDING THAT THE RESPONDANT VIOLATED SAID REGULATION. LIABILITY AND ADMINISTRATIVE SANCTIONS ARE IMPOSED ON A STRICT LIABILITY BASIS ONCE THE RESPONDANT COMMITS THE PROSCRIBED ACT.

Contrary to the arguments of the Respondent, the answer to this issue is clearly set forth in Iran Air v. Kugelman, 996 F.2d 1253 (D.C. Cir. 1993). In that case, then-Judge Ruth Bader Ginsburg found that the "essential question is whether the agency, in its reading of the current regulations, reasonably construed the statute, 50 U.S.C.A. App. § 2410, to allow the imposition of civil sanctions on a strict liability basis." The answer in Iran Air was clearly yes. Therein, the Acting Under Secretary of Commerce for Export Administration determined that an exporter's knowledge need not be shown as a prerequisite to the imposition of civil penalties under the Export Administration Act of 1979, § 11 (c), 50 U.S.C.A. App. § 2410 (c).<sup>1</sup>

The Court in the Iran Air case stated:

It is not unusual for Congress to provide for both criminal and administrative penalties in the same statute and to permit the imposition of civil sanctions without proof of the violator's knowledge. Here, the agency maintains, Congress has allowed for an array of penalties for violations of the Export Act: criminal fine and/or imprisonment for the knowing violator; more severe criminal fine and/or a longer prison terms for the willful violator; and civil penalties against any violator. Supporting the agency's position that subsection (a)'s knowledge requirement need not be read into subsection (c), Congress expressly provided that nothing in subsection (a) or (b) "limits the power of the Secretary to define by regulations violations under this Act." 50 U.S.C. App. § 2410 (b)(5). Furthermore, Congress specifically authorized the executive to establish "levels of civil penalty... based upon the seriousness of the violation, the culpability of the violator, and the violator's record of cooperation with the Government in disclosing the violation." *Id.* At 2420(c)(4). The provisions appear to leave room for civil penalty regulations that include a knowledge requirement,...or that

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<sup>1</sup> In the Iran Air, case, *Id.*, the court specifically found that 15 C.F.R. § 774.1 of the regulations had a strict liability trigger.

allow...the imposition of strict liability. *Id.* At 1258.

Therefore, there can be no question that the United States Congress authorized the Secretary of Commerce to promulgate regulations on a strict liability basis pursuant to § 2410 of the Export Administration Act. In order to determine if the Secretary intended to impose a civil sanction for an unwitting violation of the Act (*i.e.*, strict liability), we must look at the regulation that ALCOA was charged with violating:

15 C.F.R. § 787.5 **Misrepresentation and concealment of facts; evasion.**

(a) (1) Misrepresentation and Concealment. No person may make any false or misleading representation, statement, or certification, or falsify or conceal any material fact, whether directly to the Bureau of Export Administration, any Bureau of Export Administration, any Customs Office, or an official of any other United States agency, or indirectly to any of the foregoing through any other person or foreign government agency or official....

The drafting of agency regulations has evolved into an art form since the passage of the Administrative Procedure Act (5 U.S.C. § 551 *et. seq.*) in 1946. As the Court noted in the *Iran Air* case, *Id.* at 1256, the answer to whether a regulation has a strict liability trigger is determined by whether the Secretary, in drafting the regulation, included a "state of mind" requirement. A clear and unbiased reading of this regulation reveals no such requirement and therefore liability attaches on a strict liability basis.

The Respondent acknowledges that this regulation does not contain a "state of mind" element such as "knowledge to cause" (§ 787.2), with "knowledge or reason to know" (§ 787.4(a)), "with intent" or "knowing or having reason to believe" (§ 787.4(b)), and "with intent to evade" (§ 787.5(b)) (*See* Joint Stipulations of Fact Nos. 38, 39 and 40). However, the Respondent argues that since neither the statute nor the regulations define "false or misleading statements", the judge must use the "accumulated settled meaning" of these terms as defined in Black's Law Dictionary and the legal precedent applicable thereto. The Respondent argues that Black's Law Dictionary defines a "false statement" as one that is made with knowledge that it is false. The word "misleading" is defined as delusive - - calculated to lead astray or lead into error. The Respondent cites *Feld v. Mans*, 116 S.Ct. 437, 445-46 (1995) for the proposition that it is established practice to find meaning in the generally shared common-law when common-law terms are used without further specification.<sup>1</sup>

The government disagrees with what it calls the Respondent's

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<sup>1</sup> In support of its argument, the Respondent cites *NLRB v. Amax Coal Co.*, 453 U.S. 322, 329 (1981). In that case, the court held that "where Congress uses terms that have accumulated settled meaning under either equity or the common law, a court must infer, unless the statute otherwise dictates, that Congress meant to incorporate the established meaning of these terms."

"attenuated lexicographical-based arguments". The government argues that as to the federal statute issue, had the Congress intended to include a "knowledge" element in the civil penalty provision, it would have explicitly done so (See e.g., False Claims Act, 31 U.S.C. § 3729(a)). I agree. 50 U.S.C. App. § 2410(c)(1) does not include a "knowledge" element and it is clear in the Iran Air case, Id at 1258, that Congress explicitly left the issue of strict liability vs. knowledge/intent with the Secretary of Commerce. Indeed, the Secretary promulgated a regulatory scheme that included both types of regulations. Thus, where the Secretary intended that a regulation include a "knowledge" or "intent" element, the regulation contained explicit language (See, e.g., §§ 787.4(a), 787.4(b), 787.5(b), § 387.2 (1980) and joint stipulations of fact Nos. 38, 39, and 40). Conversely, where the Secretary intended no such "knowledge" or "intent" element, the regulations did not include such a trigger (See, e.g., §§ 774.1 (a), 787.2, 787.5(a)).

The case of People v. Chevron Chemical Co., 191 Cal.Rptr 537 (App. 1983) is very informative on the issue at hand. The fact that it is a California criminal case rather than a federal civil penalty case is even more compelling. In that case, the state brought an action against Chevron, charging it with violating the Fish and Game Code for depositing substances deleterious to fish, plant or bird life into state waters -- a criminal misdemeanor penalty. The sole issue presented in that case was whether the offense should be construed as a strict liability offense, or one that requires proof of criminal negligence or criminal intent.<sup>1</sup> In ruling on that issue, the Court stated:

In more recent times, the California Supreme Court found mens rea unnecessary and upheld the conviction of a meat market proprietor for "short-weighting" in the sale of meat by his employee. The court noted that "where qualifying words such as knowingly, intentionally, or fraudulently are omitted from provisions creating the offense, it is held that guilty knowledge and intent are not elements of the offense". The court went on to quote from an Ohio case which stated the basic principle: 'There are many acts that are so destructive of the social order, or where the ability of the state to establish the element of criminal intent would be so extremely difficult if not impossible of proof, that in the interest of justice the legislature has provided that the doing of the act constitutes a crime, regardless of knowledge or criminal intent on the part of the defendant'. (In re Marley (1946) 29 Cal.2d 525, 529, 175 P.2d 832).

In the Chevron case, supra at 539, the court discusses the well recognized public welfare offenses exception to the mens rea requirement in criminal prosecution. While not a criminal case, nor

<sup>1</sup> Fish and Game Code § 5650(f) provides that "It is unlawful to deposit in, permit to pass into or place where it can pass into waters of this State any of the following: . . . (f) any substances or material deleterious to fish, plant life or bird life."

the traditional public welfare offense (e.g., water pollution, use of unlicensed poison, sale of improperly branded motor oil, and liability of pharmacist for compounding of prescriptions by unlicensed persons), the regulatory violation herein involves materials that could be used for weapons of mass destruction and the injury or death of untold numbers of people. Accordingly, since these regulations deal with the most profound public welfare/national defense issues, the public interest demands that they be strictly construed in the absence of express "knowledge" or "intent" language.

The Respondent asserts that the case of Caesar Electronics, Inc., 55 Fed. Reg. 53016 (Dept Commerce 1990) supports its position that 15 CFR § 787.5(a) requires that liability is imposed only when there exists a relatively high level of knowledge and intent to make false statements. I disagree. The factual circumstances involved therein proceeded on two tracks - a criminal indictment and conviction for violating 15 CFR § 787.5(a)(3) of the Regulations by one of the Respondent's Vice-Presidents and a subsequent administrative proceeding against the Corporation for violation of 15 CFR § 787.5(a)(1)(ii)(1984). The Order from the United States District Court in the criminal case served as the underlying factual basis for the joint stipulations of the parties in the administrative case against the corporation. Thus, while the decision and order in the administrative case discussed knowledge and intent in relation to a § 787.5(a) violation, such predicates were not necessary to a finding of a violation. Indeed, both counsel stipulated at the oral argument in this case that the issue of strict liability for § 787.5(a) has never been decided (TR-36, lines 15-19).<sup>1</sup>

The Respondent cites Section 523 (a)(2)(A) of the Bankruptcy Code as support for its position that knowledge and intent to deceive is a prerequisite to any violation of § 787.5(a). I disagree. The Iran Air case, supra, clearly spells out that Congress authorized the Secretary of Commerce to promulgate strict liability and knowledge/intent based regulations. The Secretary differentiated between the two types of regulations by using "state of mind" language for violations which were not intended to employ a strict liability standard and eliminated such triggering language where strict liability was intended. Under this circumstance, any caselaw dealing with § 523(a)(2)(A) requiring knowledge and intent to deceive as a predicate to liability where the regulation is silent as to the issue of "state of mind" is simply inapplicable. Moreover, the legislative history, purpose, and construction of the Bankruptcy Code concerns a fresh start for the debtor while the Export Administration Act concerns regulating exports for reasons of national security and foreign policy.

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<sup>1</sup> 50 U.S.C. App. § 2412(c). (Also see, Sparvr Optical Research, Inc. v. Baldrige, 649 F. Supp. 1366 (D.C. Cir. 1986). This case was reversed, in part, in the Iran Air case, note No. 8 finding that a civil penalty may be imposed absent knowledge.); Dart v. United States, 848 F.2d 217 (D.C. Cir. 1988); and Harrisiades v. Shavgnessy, 342 U.S. 580, 589, 725, Ct. 512, 519, 96 L.Ed.586 (1952). The William A. Roessel, d/b/a Enigma Industries, 62 Fed. Reg 4031 (Dep't Commerce 1997) and Herman Kluever, 56 Fed. Reg. 14916 (Dep't Commerce 1991) are similarly not dispositive of the issue since both cases also involved the aggravating factor of "knowledge" or "intentional conduct".

Importantly, an agency has the power to authoritatively interpret its own regulations as a component of its delegated rulemaking powers (See Martin v. OSHRC, 499 U.S. 144, 113 L.Ed. 2d 117, 11 S.Ct. 1171.) This delegation of interpretive authority is ordinarily subject to full judicial review. However, because of the national security and/or foreign policy issues involved in regulating exports that could become component parts of weapons, the United States Congress made these Secretarial determinations final and only subject to limited judicial review (See, 50 U.S.C. App. § 2412 (c)) (1) and (3).

## II WHAT IS THE APPROPRIATE LEVEL OF SANCTIONS IN THIS CASE?

The Respondent has been found to have 50 separate violations of 15 C.F.R. § 787.6 of the former Regulations and 50 separate violations of 15 C.F.R. § 787.5(a) of the former regulations for a total of 100 violations.

Congress has provided for an array of penalties for violations of the Export Administration Act and the regulations promulgated thereunder. These penalties include a criminal fine and/or imprisonment for knowing violators, more severe criminal fines and/or longer prison terms for willful violators and civil penalties against any violator. Since the government apparently did not have proof of willful or intentional acts by the Respondent, criminal charges were not filed (TR-47). Thus, the government commenced this civil penalty action against the Respondent.

The maximum civil penalty assessment for each violation is \$10,000 (See 15 C.F.R. § 764.3(a)(1)). In addition to the penalty assessment, the government could have requested a denial of export privileges (§ 764.3(a)(2)) and/or the exclusion from practice (§ 764.3(a)(3)). However, after investigating this case, the government determined that it would only seek \$7,500 per violation and would not seek the denial of its export privileges or its exclusion from practice.

15 C.F.R. § 766.17(b)(2) requires that the presiding judge, after a de novo review of the entire record, recommend the appropriate administrative sanction or such other action as he or she deems appropriate.<sup>1</sup> 15 C.F.R. § 766.17(c) provides that any such penalty, or part thereof, may be suspended for a reasonable period of probation and remitted if no further violations occur during said probationary period. The Respondent argues that no administrative sanctions be imposed in this case or alternatively, that only a modest civil

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<sup>1</sup> Importantly, BXA does not have a standard table of orders which lists offenses with a recommended penalty range (e.g., misconduct: 1-3 month suspension) which provides guidance to the judge such as in United States Coast Guard license suspension and revocation cases (46 C.F.R. § 5.569) or a penalty schedule for United States Department of Commerce, National Oceanic and Atmospheric Administration cases where the proposed penalty is based on a published penalty schedule promulgated by the NOAA general counsel and which carries a presumption as to reasonableness (See In the Matter of William J. Verna, 4 O.R.W. 64 (NOAA App. 1985)). In that case, the Acting Administrator of NOAA found that the published penalty schedule represents a reasonable starting point and if the judge substantially increases or decreases the amount, good reason for such departures should be stated (Also see, In the Matter of Kuhnle, 5 O.R.W. 514, (NOAA App. 1989).

penalty be levied. ALCOA further argues that if the judge decides on the latter approach, that said penalty be suspended on probation.

In support of its position, the Respondent argues that any violations that occurred were not intentional or willful; that said violations resulted from its failure to comprehend the fact that the March 1991 Federal Register Notice added thirty-nine (39) chemicals to the list of chemicals that were identified as precursors for chemical weapons; that there was no risk that the chemicals would be diverted to chemical weapons use; that had the Respondent applied to BXA for the necessary validated licenses, they surely would have been granted; that the exports were entirely consumed at the refineries of the Respondent's subsidiary companies in Jamaica and Suriname;<sup>1</sup> that prior to the initiation of the government's investigation of this matter, the Respondent began developing and implementing an expanded and more comprehensive export compliance program, and that the Respondent has fully cooperated with the government in its investigation of this matter.

In the government's reply to the Respondent's Answer, it argues that the retaining of outside counsel and experts to assist in improving its export compliance procedures prior to the initiation of the investigation is an aggravating rather than a mitigating factor; that the violations alleged herein are derived from errors that go to the very core of ALCOA's export compliance procedures; that ALCOA's methodology did not involve a periodic review of the Regulations for shipments of "scheduled buying list goods" after an initial determination was made concerning the export licensing of items on that list or a thorough monitoring of pertinent regulatory amendments published in the Federal Register; that outside counsel and experts retained by ALCOA should have revamped this system immediately upon being retained; that such changes in procedures were not implemented until after the commencement of the investigation; that this investigation did not arise in the context of a voluntary self-disclosure pursuant to § 764.4 of the Regulations; and that given this, the favorable weight accorded such self-disclosures in determining appropriate sanctions is not a factor to be considered.

The government goes on to argue that an "exporter cannot reasonably 'fail to attach significance' to a regulatory change, bemoan the fact that he/she has been 'tripped-up' by changes in the law, and then argue that, by some stretch of the imagination, he/she should not be penalized for 'inadvertently' violating the law"; that ignorance of the law is no excuse; that the fact that the total value of the 50 shipments was under \$112,000 is of no consequence in determining the proper amount of the civil penalty; and that the lack of intent to make false or misleading statements is irrelevant since liability attaches on a strict liability basis. Finally, the government notes that since the March 13, 1991 amendments were properly published in

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<sup>1</sup> The Respondent notes that neither of these destinations were included in Country Group D: 3, which identifies those destinations of particular concern with respect to chemical weapons proliferation (i., e. Iran, Syria, Libya, North Korea, and Cuba) (See 15 C.F.R. § 799.1, Supp.1 (1995)).

the Federal Register, the Respondent was charged with notice of the contents of the changes (See 44 U.S.C.A. § 1507 (1991)).

In ALCOA's response to the government's arguments, it states that there are numerous undisputed mitigating circumstances in this case and no aggravating factors; that under the circumstances, it is appropriated to waive or suspend sanctions; that included within the mitigating factors are that the Respondent has no prior violations; that the chemicals were shipped to countries that are not suspected of illegal weapons development; that there was a presumption of approval, on a case by case basis, for licenses to export these chemicals from the United States to Jamaica and Suriname; that the failure of the Respondent to obtain validated licenses should be viewed as technical violations; that the government's logic is distorted since it implies that it is somehow more appropriate to impose a civil penalty on the Respondent because its compliance program was imperfect rather than if ALCOA had had no export compliance program at all; that while the Act and Regulations may not mention the value of exports as a standard for Administrative sanctions, the Judge may consider that issue as a factor in his determination; that the government's proposed penalties are nearly seven (7) times larger than the value of the shipments in this case; that given the lack of harm to U.S. national security or foreign policy interests as a result of these exports, this huge multiple illustrates that the proposed penalty is excessive and overly punitive; that recent government settlement agreements in other cases demonstrate that the proposed penalty is unreasonable; that the Respondent has no prior violations; and that there are numerous cases with similar or even more egregious facts in which the settlement proposal ranged from \$2,000 to \$5,000 per violation, large portions of which were suspended.

After fully considering the arguments of the parties as to the appropriate sanction in this case, I find that the Respondent's civil penalty shall be \$10,000 for each of the 100 violations for a total of \$1,000,000. While this assessment exceeds that requested by the government, I find that it is warranted under the facts of this case. The passage of the Export Administration Act of 1979 had one main purpose - - to control exports from the United States to other countries. As was noted in the Legislative history of this Act referring to S 737:

Exports contribute significantly to U.S. production and employment, and improved export performance helps pay for expanding U.S. imports of oil and other commodities. There are circumstances, however, in which the economic benefits and the presumption against government interference with participation in international commerce by United States citizens are outweighed by the potential adverse effect of particular exports on the national security . . . of the United States.<sup>1</sup>

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<sup>1</sup> See Export Administrative Act, P.L. 96-92, 93 Stat.503, Legislative History at 1148 (Purpose of the Legislation) which is part of the record herein.



By Federal Register Notice (Volume 56, No. 49, dated March 13, 1991), the Department of Commerce expanded export control of certain chemical weapons precursors (i.e., chemicals that can be used in the manufacture of chemical weapons). The Notice amended the extant Commodity Control List, by expanding the number of countries for which a validated license was required for 39 precursor chemicals. In issuing this Notice, the Department of Commerce underscored its concern about chemical and biological weapons indicating that serious consideration is being given to eliminating the then-existing contract sanctity provisions of the regulations (See Respondent's July 27, 1998 submission, Tab 6). Thus, as the world was becoming a more dangerous place subject to terrorist attacks, the United States Government responded by significantly increasing its regulation of specific chemicals and biological precursors.

In this regard, the government noted in it's May 1, 1998 Reply at page 10:

International trade has been regulated from the earliest days of the republic. While particular aspects or areas of regulations have varied, the fact of the matter is that those engaged in an industry in which government regulation is likely must be presumed to be aware of, and practitioners in the industry are charged with knowledge of as well as the responsibility to comply with, the duly promulgated regulations. [Citing United States v. International Minerals and Chemical Corporation, 402 U.S. 558 at 563 & 565, 29 L.Ed. 178(1971)].

In the Matter of Core Laboratories, Inc., ITA-AB-2-80, Initial Decision and Order on Remand of Administrative Law Judge Huge J. Dolan (May 4, 1982) aff'd, In the Matter of Core Laboratories, Inc., ITA-AB-2-80, Decision on Appeal and Order (March 14, 1983), remanded on other grounds, United States v. Core Laboratories, Inc., 759 F.2d 480 (5th Cir. 1985).

Of all the aggravating factors in this case, one is particularly damning -- that the Respondent, over a period of four and one-half (4.5) years, made 50 separate exports of potassium fluoride and/or sodium fluoride in violation of the Export Administration Regulations(emphasis added). Importantly, ALCOA is not a new or small company that doesn't understand the foreign export regulatory process. Quite to the contrary, the Respondent is a large multinational corporation which had a separate division (Export Supply Division) specifically dedicated to receiving requisitions, locating suppliers, purchasing products, and shipping the requested items in accordance with applicable export licensing requirements. Thus, ALCOA's conduct, under this backdrop, was flatly inexcusable and the fact that the violations were not intentional or willful is only relevant to the fact that a federal criminal indictment was not handed down. ALCOA's failure to comprehend the change in the Federal Register Notice, given the existence of its Export Supply Division, is also particularly troubling.<sup>1</sup> Moreover, the fact that the unlawful shipments consisted

<sup>1</sup> As noted above, 44 U.S.C.A. § 1507 (1991) imputes knowledge of these changes to the Respondent.

of precursors for chemical weapons, regardless of the lack of any potential diversion in these instances, is not something that should be viewed as a technical oversight and is clearly an aggravating factor.

In mitigation, ALCOA argues that had it applied for the necessary validated licenses, they would have been presumptively granted. This argument misses the point. Over the past 20 years, a terrorist threat has developed to our Republic and our interests abroad. In order to protect our country and our interests, laws and regulations were passed/implemented to allow the government to monitor and regulate the export of precursor chemicals and if necessary, prevent any such exports that pose a clear and present danger. Given the huge number of exports from the United States, how is the government suppose to monitor the export of precursor chemicals if it doesn't know that the shipments were being made over a four and one-half year period? ALCOA responds that it filed under general license G-DEST and implies that the government was aware of these 50 separate exports over a four and one-half year period (See Respondent's Answer dated January 20, 1998, page 8). I disagree. The Respondent did not submit any evidence to support this position. The Respondent cannot shift its responsibility to the government to do that which it is legally required to do. Given the volume of such exports and the limited public resources to regulate these shipments, the government placed a legal duty on the exporter to file the specific applications with the office charged with such oversight responsibility. The Respondent breached that duty and in so doing, deprived the government of the opportunity to monitor its export of precursor chemicals.

The Respondent also argues that all of the precursor chemicals were entirely consumed at the refineries of the Respondent's subsidiary companies in Jamaica and Suriname. Once again, ALCOA misses the point. The crucial point here is that the government was deprived of possible vital information in its fight to control terrorism. In other words, if the world-wide export of chemicals/biological agents were a puzzle being put together by a U.S. Department of Commerce security team, this information constituted 50 pieces of that puzzle that the government did not have. While it turned out that there was no problem, the fact remains that the government did not have the whole picture. Without the whole picture, or in this case, all of the information about precursor chemical exports, catastrophic errors in preventative decision-making could have occurred.

The Respondent argues that prior to the initiation of the investigation into this matter, it began developing and implementing an expanded and more comprehensive export compliance program. The Respondent notes that it developed export control matrices for each U.S. business unit to identify export control issues on a product-by-product basis; produced a video to increase awareness of export control requirements to be used in conjunction with on-site training for each business unit; appointed export liaison's for each of its business units including the Export Supply Division, who is responsible for disseminating export compliance information; that it's legal department now monitors the Federal Register daily for changes

to the EAR effecting the Respondent's products and operations, and disseminates this information to the export liaisons; that the Respondent is also developing a Denial List search application on its new company-wide intranet; and that all key Exports Supply Division employees have attended export compliance training seminars.

While the Respondent's January 20, 1998 Answer details the above-recited improvements to its export compliance program, there is no record evidence submitted by the Respondent in Tab 2 of its January 20, 1998 Answer specifying when these improvements were implemented. The EAR amendment occurred on March 13, 1991. The violations occurred between June 14, 1991 and December 7, 1995. During this period of time, the Respondent's export compliance procedures did not involve a periodic review of the requirements for shipments of "scheduled buying list goods" or a through monitoring of pertinent regulatory amendments published in the Federal Register (See Stipulation of Fact No. 17). Thus, the record is void of any meaningful evidence as to what policies and procedures were in effect between March 13, 1991 and December 7, 1995.

Moreover, subsequent to December 7, 1995, the record does not indicate when the above-recited improvements were implemented and in what form those improvements were made. Indeed, the first memorandum from the Legal Department to the Export Supply Division is dated May 9, 1996. Interestingly, the only time this issue is discussed during this time period is set forth in the Joint Stipulations. However, as one can see from reading joint Stipulation of Fact Nos. 17, 20, 27, and 29, these factual recitations only recite what the Respondent did not do as opposed to what program it had in effect and what changes were made.

The Respondent states that anything more than a nominal fine in this case is unreasonable. In support of this position, ALCOA argues that recent BXA enforcement orders based on settlement agreements establish a range from \$2,000 per violation to \$5,000 per violation, large portions of which were suspended. The Respondent cites the following settlements in support of its argument that the government's proposed \$7500 per violation is excessive and inconsistent with past BXA practice:

1. Gateway 2000 case - This case involved the unlawful export of U.S. - origin computer equipment without a license in violation of § 787.4(a), § 787.5(a) and § 787.6 for a total of 87 violations. The agreed upon fine was \$402,000 or \$4620 per violation.
2. Allergan, Inc. case - The Respondent was charged with 412 violations of § 787.6 for violating export controls on biological agents. The fine was \$824,000 or \$2,000 per violation.
3. Sierra Rutil America, Inc. case - The Respondent was charged with eight unlicensed exports of sodium fluoride to Sierra Leone over a

two year period in violation of § 787.6. The settlement resulted in a \$30,000 fine or \$3,750 per violation with half of the fine remitted on probation. This case did not involve exports to controlled or affiliated entities.

4. Herb Kimiatck and Kimson Chemical Inc. case - The Respondent was charged with two counts of exporting sodium cyanide without a validated license in violation of § 787.6 and § 787.4(a) of the regulations. The fine was \$20,000 or \$10,000 per violation.

5. Syntex case - The Respondent was charged with 13 violations of unlawfully exporting hydrogen fluoride in violation of § 787.2. The fine was \$65,000 or \$5,000 per violation. One half of the fine was remitted for 2 years and then waived if there were no further violations.

6. Palmeros Forwarding case - The Respondent was charged with 10 violations wherein it used export control documents which represented that the Syntex hydrogen fluoride did not need export licenses. The fine was \$50,000 or \$5,000 per violation with a two year denial of export privileges. The fine and export privilege denial were suspended on probation.

7. Villasana case - This case also arose out of the Syntex case. The Respondent was charged with one count and fined \$2500 and the denial of export privileges. The fine and export privilege denial were suspended on probation.

8. Chemicals Export Company of Boston case - The Respondent was charged with four counts of exporting sodium cyanide without a valid export permit in violation of § 787.6. The fine was \$16,000 or \$4,000 per violation.

9. Southern Information Systems case - The Respondent was charged with five counts for the unlawful export of digital microwave systems in violation of § 787.6. The fine was \$25,000 or \$5,000 per violation.

10. Advanced Technology case - The Respondent was charged with two counts of re-exporting electronic equipment from Belgium to Russia without a permit in violation of § 787.6. The fine was \$10,000 or \$5,000 per violation.

11. LEP Profit International, Inc. - The Respondents were charged with twelve counts of

preparing shipping documents that contained false information in violation of § 787.5(a). The fine was \$60,000 or \$5,000 per violation. A portion of the penalty, \$15,000, was suspended for two years, then waived so long as LEP complies with the export control regulations.

12. NF&M International Inc. - The Respondents were charged with thirty-three violations for exporting titanium alloy products without the necessary export licenses in violation of § 787.6. The fine was \$82,500 or \$2,500 per violation. The Department agreed to suspend payment of \$42,500 for one year and then to waive that payment provided NF&M complies with export control regulations.

13. DATRAC AG - The Respondent was charged with one count for re-exporting U.S. - origin data communications equipment from Switzerland to Singapore without obtaining the required export license in violation of § 787.6. The fine was \$2,500.

14. Lasertechnics Inc. - The Respondents in this case were charged with thirty-six violations for exporting U.S. - origin thyratrons from the United States to Hong Kong, Ireland, Malaysia, and Singapore without obtaining the individual validated export licenses in violation of § 787.6. The fine was \$180,000 or \$5,000 per violation. Pursuant to § 766.18(c), the remaining balance of \$80,000 was suspended for three years and shall thereafter be waived, provided that, during the period of suspension, the Respondent has committed no violation of the Act, or any regulation, order, or license issued thereunder.

15. President Titanium - The Respondent was charged with twenty-five violations for exporting U.S. - origin titanium bars to various countries without obtaining the required validated licenses in violation of 787.6. The fine was \$125,000 or \$5,000 per violation. Pursuant to § 766.18(c), the remaining balance of \$50,000 was suspended for one year provided that, during the period of suspension, the Respondent commit no violation of the Act, or any regulation, order, or license issued thereunder.

16. Allvac - The Respondent was charged with forty-eight counts for exporting titanium alloy solid cylindrical forms with diameters greater than three inches from the United States to

various countries and exported maraging steel to Germany without the required validated license in violation of § 787.6. The fine was \$122,500 or \$2,552 per violation. Pursuant to § 766.18(c), payment of the remaining balance of \$47,500 was suspended for one year provided that, during the period of suspension, the Respondent commit no violation of the Act, or any regulation, order, or license issued thereunder.

17. EC COMPANY - The Respondent was charged with four violations of making false or misleading statements on an export control document; exported U.S. - origin spare parts from the United States to Vietnam without validated license in violation of § 787.6; and two counts for exporting spare parts from the United States to Singapore that Respondent knew would be re-exported from Singapore to Vietnam in violation of § 787.4(a). The fine was \$8,000 or \$2,000 per violation.

I find the Respondent's argument regarding the previous settlement of cases by BXA with lower civil penalty assessments to be unpersuasive. Settlements are reached based upon the facts of each case. These facts include the relative strengths and weaknesses of each party's case; the desires of one or both sides to extricate themselves from the litigation for whatever reason; and a determination that such a settlement is a good business decision in the case of a Respondent or satisfies the public interest in the case of the government. Moreover, the reasons behind each party's decision to enter into a settlement are rarely, if ever, made public where foreign policy and/or national security issues are involved. As the government points out, this phenomenon is especially true in export cases (TR. 42).

During the Oral Argument in this matter, Counsel for the government stated:

All parties in this courtroom know that citing a series of case names and corresponding settlement figures knowing nothing of the details of what actually transpired during the settlement negotiations, much less any internal discussions of litigation strategy or what not, is really not particularly helpful.

BXA does not maintain a rubric. It does not have a penalty matrix or a cookie cutter into which to force every case it prosecutes. Rather, each case is individually evaluated, and considerations that apply in one, may not apply in another, or may not be given the same impact depending on the facts of each case.

The Respondent argues in mitigation that it has no prior record of violations. I find this argument is entitled to little or no weight given the fact that for four and one-half years, the Respondent committed one hundred violations of the EAR. Indeed, it is not the prior record that is important here, but the aggravating factor of 100 violations and the continuing course of conduct over such a long period. Under this circumstance, I find that the Respondent's actions constitute a gross and long standing neglect of it's undisputed legal duty which totally outweighs the lack of a prior record of violations.

As noted above, the government recommends a \$7,500 civil penalty assessment for each of the 100 violations. The Respondent argues for a zero level of civil penalty. However, the Respondent states that it would accept a nominal fine per violation under the suspension on probation procedures. The Respondent also states that the government's recommended sanction is close to the \$10,000 maximum and is therefore unreasonable. Indeed, it argues that if you look at the cited cases that were settled, the maximum range should not exceed \$2,000 to \$5,000. I disagree. Congress established a statutory scheme which provided for a full panoply of penalties ranging from federal prison time and/or severe monetary fines to mere administrative action which could involve civil penalties, denial of export privileges, exclusion from practice or any combination thereof. When viewed in this context, it becomes readily apparent that the government has recommended an unreasonably low sanction (emphasis added).

Indeed, the government might well have opted to argue in a criminal forum that ALCOA's conduct was so grossly negligent as to constitute a willful disregard of federal law. In this case, the amount of care demanded by the standard of reasonable conduct on the part of the Respondent must be in proportion to the apparent risk. As the danger becomes greater, the Respondent is required to exercise caution commensurate with that increased risk. Since the Respondent was dealing with precursors for chemical weapons, the March 13, 1991 Federal Register Notice constructively put it on notice that it must exercise a great amount of care because the risk is great. It failed to do so.

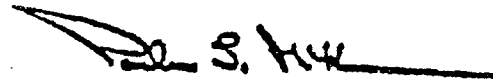
Importantly, the government voluntarily lowered the sanction bar all the way down to the level of an administrative civil penalty in this case. That having been done, the Respondent argues that the government is being harsh and should lower the bar further. In effect, the Respondent is attempting to have the government negotiate with itself. This is wrong. Based upon the detailed discussion set forth above, I find the appropriate sanction for each of these unlawful shipments is \$10,000. The Respondent is a huge multi-national corporation. As such, a \$10,000 penalty per violation is miniscule for ALCOA who describes itself as "one of the world's leading producers of aluminum....". At no time during this proceeding, did ALCOA's counsel raise financial hardships for mitigating any civil penalty. At some point, ALCOA has to stand up and take responsibility for it's gross and long-standing breach of legal duty. Conversely, the United States government must set its civil penalties at a high enough level to insure that large multi-national corporations don't ignore the law and if they get

caught, merely consider the fine as a cost of doing business.

ACCORDINGLY, IT IS ORDERED that Aluminum Company of America, having been found by preponderant evidence to have one hundred violations of the Export Administration Regulations, pay a civil penalty in the amount of \$10,000 per violation for a total of \$1,000,000<sup>1</sup>.

IT IS FURTHER ORDERED that a copy of this Recommended Decision and Order shall be served on Aluminum Company of America and the Department of Commerce in accordance with § 778.16(b)(2) of the Regulations.

DONE AND DATED on this 21th day of December, 1998  
Alameda, California



Hon. Parlen L. McKenna  
United States Administrative Law Judge

To be considered in the thirty (30) day statutory review process which is mandated by 50 U.S.C.A § 2412 (c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, Bureau of Export Administration, U.S. Department of Commerce, 14<sup>th</sup> & Constitution Ave., N.W., Room H-3898, Washington, D.C., 20230, within twelve (12) days. Replies to the other party's submission are to be made within the following eight (8) days (See 15 C.F.R. § 766.22(b) and 50 Fed. Reg. 53134 (1985)). Pursuant to 50 U.S.C.A. § 2412(c)(3) of the Act and 15 C.F.R. § 766.22(e) the Final Order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within fifteen (15) days of its issuance.

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<sup>1</sup> In addition to the arguments made herein as to the appropriate amount of the monetary penalty for each violation in this case, I hereby accept the arguments of the government as reasonable to the extent they are not inconsistent with the rational set forth in Section II, above. To the extent that the Respondent's arguments as to sanction are inconsistent with the Recommended Decision and Order, they are specifically rejected.



INSTRUCTIONS FOR PAYMENT OF CIVIL PENALTY

1. The civil penalty check should be made payable to:

U.S. Department of Commerce

2. The check should be mailed to:

U.S. Department of Commerce  
Bureau of Export Administration  
Finance Division  
Room H-6622  
14<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, D.C. 20230

CERTIFICATE OF MAILING

I hereby certify that I have sent the attached Decision and Order by Certified Mail -- Return Receipt Requested and first class U.S. Mail, postage prepaid to the following individuals:

Edward L. Rubinoff, P.C.  
Akin, Gump, Strauss, Hauer & Feld, L.L.P.  
1333 New Hampshire Ave., N.W., Suite 400  
Washington, D.C. 20036

Michael D. Scott  
Aluminum Company of America  
Room 1358  
425 Sixth Avenue  
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Pittsburgh, PA 15219-1850

Jeffrey E.M. Joyner, Esq.  
Chief Counsel for Export Administration  
U.S. Department of Commerce  
14<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, D.C. 20230  
Facsimile No. (202) 482-0042

DONE AND DATED ON THIS 21 DAY IN DECEMBER, 1998  
ALAMEDA, CALIFORNIA

CINDY J. ROBERSON  
Legal Technician

---

Cindy J. Roberson  
Legal Assistant to the  
Hon. Parlen L. McKenna

APPENDIX A

The following documents constitute the entire record in this proceeding:

1. The December 12, 1997, Charging Letter from the United States Department of Commerce, Bureau of Export Administration to the Aluminum Company of America (ALCOA) which included the Inter-Agency referral to the United States Coast Guard for assignment of a judge pursuant to Inter-Agency agreement;
2. The December 12, 1997, Notice of Appearance from the United States Department of Commerce, Bureau of Export Administration;
3. The January 20, 1998, ALCOA Answer to the December 12, 1997 Charging Letter;
4. The January 29, 1998, Referral Letter from the United States Coast Guard Docketing Center to Judge Parlen L. McKenna;
5. The January 30, 1998, Chief Judge assignment of Judge Parlen L. McKenna to preside over this matter;
6. The parties Joint Stipulations of Fact, dated March 27, 1998;
7. The United States Department of Commerce Request for an Extension of Time, dated April 23, 1998;
8. The United States Department of Commerce Reply to Respondent's Answer, dated May 1, 1998;
9. Order granting submission of supplemental pleadings issued by Judge McKenna, dated May 7, 1998
10. ALCOA's Response to the May 1, 1998, Reply submitted by the Office of Export Enforcement, Bureau of Export Administration, dated May 13, 1998;
11. The Order and Notice of Oral Argument issued by Judge McKenna, dated May 22, 1998;
12. The transcript of record for the July 20, 1998, Oral Argument;
13. The July 27, 1998, submission of Oral Argument supporting documents submitted by Respondent;
14. The September 24, 1998 supplemental submission of supporting documents submitted by Respondent;

E612-40

## AKIN, GUMP, STRAUSS, HAUER &amp; FELD, L.L.P.

ATTORNEYS AT LAW

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MOSCOW  
NEW YORK  
PHILADELPHIA  
SAN ANTONIO

January 20, 1998

U.S. Coast Guard ALJ Docketing Center  
40 S. Gay Street  
Baltimore, MD 21202-4022Re: In the Matter of Aluminum Company of America

Dear Sir or Madam:

On behalf of Aluminum Company of America ("ALCOA"), and pursuant to 15 C.F.R. § 766.6, we hereby submit an answer to the charging letter issued by the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce ("BXA") in the above-mentioned matter. Included in the answer to the charging letter is a demand for a hearing pursuant to 15 C.F.R. § 766.13. ALCOA also hereby submits a notice of appearance in accordance with 15 C.F.R. § 766.4.

Copies of the foregoing submissions have been served today on counsel for BXA as indicated in the attached certificate of service. If you have any questions or desire additional information, please feel free to contact us.

EG12-41

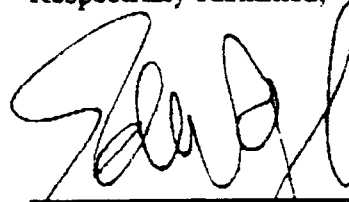
AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.

U.S. Coast Guard ALJ Docketing Center

January 20, 1998

Page 2

Respectfully submitted,



Edward L. Rubinoff, P.C.

Samuel C. Straight

Akin, Gump, Strauss, Hauer, & Feld, L.L.P.

1333 New Hampshire Avenue, N.W.

Suite 400

Washington, DC 20036

and

Michael D. Scott

Aluminum Company of America

Room 1358

425 Sixth Avenue

ALCOA Building

Pittsburgh, PA 15219-1850

Counsel for Aluminum Company  
of America

cc: Chief Counsel for Export Administration  
Room H-3839  
U.S. Department of Commerce  
14th Street and Constitution Avenue, N.W.  
Washington, D.C. 20230  
ATTN: Jeffrey E.M. Joyner, Esq.

E612-42

UNITED STATES DEPARTMENT OF COMMERCE  
OFFICE OF ADMINISTRATIVE LAW JUDGE  
WASHINGTON, D.C. 20230

In the Matter of:	)
	)
ALUMINUM COMPANY OF AMERICA	)
425 Sixth Avenue	)
ALCOA Building	)
Pittsburgh, Pennsylvania 15219-1850,	)
	)
Respondent	)

**ANSWER TO CHARGING LETTER  
AND  
DEMAND FOR HEARING**

Pursuant to 15 C.F.R. § 766.6, Aluminum Company of America (hereinafter "ALCOA") hereby answers the charging letter in the above-captioned matter. The charging letter was issued by the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce ("BXA"), and dated December 12, 1997.<sup>1</sup>

**CHARGES**

In its charging letter, BXA alleges that ALCOA committed 100 violations of the Export Administration Regulations ("EAR") between 1991 and 1995.<sup>2</sup> In charges 1-50, BXA alleges that on 50 separate occasions between on or about June 14, 1991 and on or

<sup>1</sup> Pursuant to 15 C.F.R. § 766.6(a), the respondent must answer a charging letter within 30 days after being served. BXA officially served the charging letter on ALCOA by certified mail. The date of service of a charging letter is the date of its delivery. See 15 C.F.R. § 766.3(c). ALCOA received the charging letter on December 18, 1997. This delivery date establishes January 20, 1998 as the due date for ALCOA's answer to the charging letter. See 15 C.F.R. § 766.5(e). The undersigned is authorized to state that counsel for BXA has stipulated that January 20, 1998 is the answer date.

<sup>2</sup> The alleged violations are defined in the charging letter with reference to the EAR that were in effect during that period, as codified at 15 C.F.R. Parts 768-799 (1991-1995). Since that time, the EAR have been reorganized and restructured, and are now published at 15 C.F.R. Parts 730-774 (1997). The current regulations establish the procedures applicable to this proceeding.

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about December 7, 1995, ALCOA exported potassium fluoride and sodium fluoride from the United States to Jamaica and Suriname without obtaining the validated export licenses required by Section 772.1(b) of the former regulations, resulting in 50 violations of Section 787.6 of the former EAR. In charges 51-100, BXA alleges that ALCOA used Shipper's Export Declarations ("SEDs") for those 50 shipments on which ALCOA represented that the potassium fluoride and sodium fluoride were being exported to Jamaica and Suriname under general license authority, and that such conduct constitutes making false or misleading statements of material fact to a U.S. agency in connection with the use of export control documents, in violation of Section 787.5(a) of the former EAR.

### FACTUAL BACKGROUND

Before responding specifically to these charges, ALCOA would like to set forth for the benefit of the Administrative Law Judge ("ALJ") the facts and circumstances upon which the charging letter is based.

Founded in 1888, ALCOA is the world's leading producer of aluminum and a major participant in all segments of the industry: mining, refining, smelting, fabricating and recycling. ALCOA serves customers worldwide in the packaging, automotive, aerospace, construction and other markets with a great variety of fabricated and finished products in a wide array of consumer and industrial applications. ALCOA is also the world's largest producer of alumina, which is both an intermediate product in the production of aluminum and an important chemical product in itself. ALCOA has 178 operating locations in 28 countries.

All of the exports at issue in this case were made to ALCOA's refinery operations in Jamaica (Jamalco) and Suriname (Suralco). These refineries are located near bauxite mines. Bauxite is the raw ore for aluminum. The refineries process the bauxite so as to extract aluminum oxide (alumina), which becomes the basic feedstock for ALCOA's metal and chemical businesses. Both refineries were directly controlled by ALCOA during the period June 14, 1991 through December 7, 1995 ("the review period").

Potassium fluoride is the key reagent used during the refining of alumina from its bauxite ore. Bauxite is crushed and mixed with a caustic soda solution. This solution dissolves the alumina present in the bauxite. Potassium fluoride is used to determine the level of dissolved alumina in the caustic solution. Only a small amount of potassium fluoride is used per metric ton of bauxite processed.<sup>1</sup> All of the potassium fluoride exported to the Jamalco and Suralco refineries during the review period was consumed in this titration process.

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<sup>1</sup> For example, in 1997 the two refineries received a total of 1,120 kilograms of potassium fluoride and processed a total of 4,685,000 metric tons of bauxite – roughly equivalent to .23 grams of potassium fluoride per metric ton of bauxite.

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During the review period, sodium fluoride was used by the ALCOA facility in Suriname to treat drinking water for people living in the Suralco refinery area. All of the sodium fluoride exported was used by this facility and was fully consumed in the water treatment process. ALCOA sold the water treatment facility to the government of Suriname in July 1994. Therefore, Suralco no longer uses any sodium fluoride.

Logistical support for the ALCOA refineries in Jamaica and Suriname is provided by the Export Supply Division ("ESD"), located in New Orleans, LA.<sup>4</sup> Through ESD, the refineries regularly purchase certain items from a scheduled buying list, while other items are purchased only as required in specific instances. In this capacity, ESD purchases everything from office supplies and repair parts to replacements for equipment and operating supplies. ESD receives requisitions from the refineries, locates U.S. suppliers for the requested products, purchases the products, and ships them to the refineries. ESD prepares all export and shipping documentation for shipments to the refineries.

ESD's sole function is to support the Jamalco and Suralco refineries. It annually handles approximately 25,000 transactions involving 100,000 different items, with a total value of over \$125 million. Before, during and after the review period, ESD was aware of the EAR, and has always sought in good faith to comply with all EAR requirements. Indeed, ESD sought and obtained validated export licenses for a variety of products, including computer systems and related equipment.<sup>5</sup>

Both potassium fluoride and sodium fluoride were on ESD's scheduled buying list for the refineries both before and during the review period, and were routinely purchased against periodic requisitions regularly submitted by Jamalco and Suralco. During the review period, ESD made forty-seven shipments of potassium fluoride to the Jamaica and Suriname refineries, and three shipments of sodium fluoride to the Suriname refinery.

Prior to March 13, 1991, validated licenses were not required under the EAR for exports of potassium fluoride and sodium fluoride either to Jamaica or Suriname. Therefore, prior to that date, ESD had lawfully exported these products on a regular basis to the refineries under EAR general license authority. However, on March 13, 1991, the Department of Commerce amended the Commerce Control List of the EAR by expanding the number of countries for which a validated license is required for exports of thirty-nine

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<sup>4</sup> ESD was directly owned by ALCOA during most of the review period. However, as of December 31, 1994, ALCOA's bauxite, alumina and chemical operations were transferred to a majority owned subsidiary, Alcoa Alumina & Chemicals, LLC. Since ultimate control has at all time remained with ALCOA, that transfer has been disregarded for purposes of these proceedings.

<sup>5</sup> Attached hereto are copies of sample licenses issued by BXA authorizing ESD to export goods to Jamalco and Suralco. See Attachment 1.



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commodities which, while having numerous legitimate commercial applications, are also considered precursor and intermediate chemicals used in the production of toxic chemical agents useable in weapons.<sup>6</sup> The thirty-nine dual-use chemicals covered by the new rule included potassium fluoride and sodium fluoride. The rule provided that exports of these chemicals would thereafter require a validated license to all countries except NATO members, Australia, Austria, Ireland, Japan, New Zealand, and Switzerland. Thus, Jamaica and Suriname were implicitly included in this expanded list of countries for which a validated export license is required.

Unfortunately, ESD missed this change to the Commerce Control List. At the time, ALCOA's export control procedures focused on its commercial sales of manufactured products to unaffiliated customers. This does not mean that ESD ignored U.S. export controls. To the contrary, as demonstrated by the export licenses appended hereto, ESD made a concerted effort to comply with the regulations. However, because ESD handled internal transfers of standard goods between ALCOA subsidiaries and divisions, its export compliance procedures concentrated principally on the special-order items requested. For these special-order items, ESD checked that each shipment complied with the EAR.

By contrast, ESD also made frequent shipments of items on the scheduled buying list. When such items were first ordered by the refineries, ESD initially determined the applicable export licensing requirements. Once these initial determinations were made for items on the scheduled buying list, ESD did not thereafter perform a complete check of the EAR for each shipment of goods to ALCOA's refineries. While this explanation does not excuse ESD's failure to obtain licenses in this case, it is important that the ALJ understands the context in which the transactions occurred.

As mentioned above, both potassium fluoride and sodium fluoride were on the scheduled buying list for the Jamalco and Suralco refineries, and prior to March 1991 they were eligible under the former EAR for export to Jamaica and Suriname under a general license. Under the procedures then in place (but which have since been revised, as discussed infra), ESD did not perform a complete export compliance check for each shipment of these chemicals to the refineries during the review period. ESD, which viewed potassium fluoride and sodium fluoride as simple laboratory supplies ordered routinely by affiliated entities in small quantities for use in the alumina refining process and for water treatment, failed to attach any significance to the March 1991 EAR amendment, which was obliquely entitled "Expansion of Foreign Policy Controls on Chemical Weapon Precursors." Therefore, ESD simply missed the regulatory amendment, and inadvertently continued to export these chemicals to the refineries during the review period without first obtaining the newly-required validated export

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<sup>6</sup> See Expansion of Foreign Policy Controls on Chemical Weapon Precursors, 56 Fed. Reg. 10756 (March 13, 1991) (interim rule) (codified at 15 C.F.R. § 799.1, Supp. 1).

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licenses. Consistent with this misunderstanding, ESD issued SEDs for these shipments which indicated that the goods were exported under a general license authority.

### ANSWERS TO CHARGES

#### 1. Charges 1-50

ALCOA admits that its Export Supply Division exported potassium fluoride and sodium fluoride to its affiliated refineries in Jamaica and Suriname on 50 occasions during the review period without the validated export licenses then required under Section 772.1(b) of the former EAR, and that these transactions technically violated Section 787.6 of the former EAR.

#### 2. Charges 51-100

ALCOA admits that its Export Supply Division indicated on the SEDs for these shipments that they were being exported to Jamaica and Suriname under general license authority, but denies that such conduct constitutes making false or misleading statements in violation of Section 787.5(a) of the former EAR. Indeed, these statements were not false or misleading. ESD did in fact purport to export the shipments under a general license. Unfortunately, as ALCOA subsequently learned and acknowledges, the goods were not eligible for export to Jamaica and Suriname under a general license. That mistake, however, constitutes a violation of Section 787.6 of the former EAR, which is subsumed in charges 1-50, not a violation of Section 787.5(a).

Moreover, ESD had no intent to make any false or misleading statements on the SEDs. ESD at the time believed in good faith that the exported chemicals were eligible for shipment under general license. ESD did not understand that the March 13, 1991 EAR amendment imposing a validated license requirement on certain exports of chemicals applied to its shipments of potassium fluoride and sodium fluoride to Jamaica and Suriname. Therefore, since ESD did not knowingly make a false or misleading statement on the SEDs, no violation of Section 787.5(a) of the former EAR occurred.

Section 787.5(a) of the former EAR provided in relevant part:

No person may make any false or misleading representation, statement or certification, or falsify or conceal any material fact, . . . [i]n connection with the preparation, submission, issuance, use, or maintenance of any export control document.

Neither the statute nor the regulations defined the operative term, "false or misleading statement," as used in this section of the former EAR. However, this term has

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accumulated settled meaning under the law, and should be given that meaning in this regulation.<sup>7</sup>

A "false or misleading statement" is one that is made with the knowledge that it is false. Black's Law Dictionary defines a "false statement" as follows:

Statement knowingly false, or made recklessly without honest belief in its truth, and with purpose to mislead or deceive. An incorrect statement made or acquiesced in with knowledge of incorrectness or with reckless indifference to actual facts and with no reasonable ground to believe it correct. Such are more than erroneous or untrue and import intention to deceive.<sup>8</sup>

Additionally, "misleading" is defined as "[d]elusive; calculated to lead astray or lead into error." (emphasis added).<sup>9</sup> Section 787.5(a) of the former EAR incorporated all of these terms. The definitions of these terms illustrate that they have accumulated a settled meaning under the law, which includes a requirement of knowledge. Accordingly, a respondent must at least have knowledge that his statement was false in order to be held liable under Section 787.5(a) of the former EAR.

Adjudicated cases involving Section 787.5(a) of the former EAR illustrate that liability is imposed only when there exists a relatively high level of knowledge and intent to make false statements. For example, in Caesar Electronics, Inc., 55 Fed. Reg. 53016 (Dep't Commerce 1990) (action affecting export privileges), the administrative law judge ("ALJ") found the respondent corporation liable for listing a false ultimate consignee on a Shipper's Export Declaration. The ALJ found that the company's Vice President already pleaded guilty to a criminal indictment that he knowingly concealed from the Commerce Department material changes in the application and license. The ALJ further found that

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<sup>7</sup> See Feld v. Mans, 116 S. Ct. 437, 445-46 (1995) (stating established practice of finding meaning in the generally shared common law when common-law terms are used without further specification); NLRB v. Amax Coal Co., 453 U.S. 322, 329 (1981) ("Where Congress uses terms that have accumulated settled meaning under either equity or the common law, a court must infer, unless the statute otherwise dictates, that Congress meant to incorporate the established meaning of these terms.").

<sup>8</sup> See Black's Law Dictionary 417 (abridged 6th ed. 1991). Similarly, Black's explains that "to maintain an action for damages for 'false representation,' the plaintiff, in substance, must allege and must prove by a preponderance of the evidence the following elements: (1) that the representation was made; (2) that it was false; (3) that the defendant knew [the representation] was false, or made it without knowledge as a positive statement of known fact; . . . ." (emphasis added). Id.

<sup>9</sup> Id. at 691. Similarly, "concealment" is defined as a "withholding of something which one knows and which one, in duty, is bound to reveal." Id. at 199.

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the Vice President admitted his actions in a separate Commerce Department proceeding, and admitted that they constituted violations of Section 787.5(a). Accordingly, the ALJ found that the Vice President knowingly instructed an employee to enter a false consignee on the SED, and held the company liable for its employee's actions. Thus, there was overwhelming evidence that the corporation, through its officer, knowingly misrepresented a material fact on the SED. Other decisions applying Section 787.5(a) of the former EAR reach the same conclusion.<sup>10</sup>

By contrast, in MM Technology and Dieter Muller, 57 Fed. Reg. 19593 (Dep't Commerce 1992) (action affecting export privileges), the ALJ determined that respondents caused the export of a controlled product without a validated license, but that BXA failed to establish by a preponderance of the evidence that the respondents caused, counseled or induced another to make a false or misleading statement. In Muller, respondent used a freight forwarder to export computer equipment to Germany. An employee of the freight forwarder indicated to respondent that an export license might be necessary for the shipment. According to this employee, the respondent stated, "don't worry about it, I've done it before." The freight forwarder's employee interpreted this comment to mean that she was to complete the Shipper's Export Declaration without a validated license, which she did. Respondent argued that he asked the employee to obtain the required license and offered to pay a fee for it. The ALJ determined that the evidence presented did not establish that one version of events was more plausible than the other, and that even if the conversation occurred as the employee indicated, this did not establish that the respondent caused, counseled or induced the employee to make a false statement. This case illustrates that a misunderstanding which resulted in entry of mistaken information on an SED is not sufficient to impose liability under Section 787.5(a) of the former EAR.

Similar false statement provisions in other regulatory programs further support the conclusion that a respondent must have knowledge of, and intent to make, a false statement in order for liability to be imposed. For example, the Bankruptcy Code provides that a discharge of a debt does not apply "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by false pretenses, a false representation or actual fraud, other than a statement respecting the debtor's or an insider's financial condition."<sup>11</sup> As with Section 787.5(a) of the former EAR, the

<sup>10</sup> See, e.g., William A. Roessl, d/b/a Enigma Industries, 62 Fed. Reg. 40331 (Dep't Commerce 1997) (decision and order) (finding violation of Section 787.5(a) where exporter represented that goods were being exported to Canada, "when, in fact, as [exporter] knew, the goods were not intended for ultimate destination in Canada"); Herman Kluever, 56 Fed. Reg. 14916 (Dep't Commerce 1991) (order on export privileges) (finding liability under Section 787.5(a) where respondent admitted to changing export control documents and misleading U.S. exporters about the destination of exports).

<sup>11</sup> See 11 U.S.C. §523(a)(2)(A).

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Bankruptcy Code does not specifically mention knowledge or scienter as a requirement for liability under this subsection. Nevertheless, courts have held that a creditor must prove under section 523(a)(2)(A) that the alleged false representation was made with knowledge and intent to deceive.<sup>12</sup>

As the foregoing discussion demonstrates, there is an implicit requirement in Section 787.5(a) of the former EAR that an alleged false or misleading statement must be made with intent to deceive, or at least with knowledge that the statement was false. BXA has failed to allege, much less establish by a preponderance of the evidence, that the indications of general license eligibility set forth in the SEDs in the transactions in question were made by ESD with the knowledge that they were false or with the intention of misleading government authorities.<sup>13</sup>

In fact, the entries on the SEDs show that there was absolutely no intent to mislead. The SED requires an exporter to describe the goods or commodities being exported. ESD did not misrepresent the nature of the goods shipped to Jamaica and Suriname; instead, it identified the potassium fluoride and sodium fluoride by their specific nomenclature. Not only does this show that there was not intent to mislead, but it renders the erroneous designation of a general license authority not misleading because the government would know from the specific nomenclature that a validated license was in fact required and that reliance on general license authority was incorrect.

The facts prove beyond a doubt that ESD did not know that the statements it made on the SEDs were inaccurate. Moreover, the evidence reveals no intent whatsoever to make a false statement, to conceal, or otherwise to deceive government officials

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<sup>12</sup> See In re A.J. Lane & Co., Inc., 171 B.R. 1, 3 (D. Mass. 1994), aff'd 50 F.3d 1 (1st Cir. 1995); In re Levitan, 46 B.R. 380, 389 (Bankr. 1985); see also Feld, 116 S. Ct. at 443 (stating that operative terms in §523(a)(2)(A) carry the acquired meaning of terms of art and that courts construing the statute routinely require intent).

<sup>13</sup> BXA will likely argue that Section 787.5(a) imposed strict liability for false statements, citing the decision in Iran Air v. Kugelman, 996 F.2d 1253 (D.C. Cir. 1993). However, Iran Air is clearly distinguishable from this case and is therefore not dispositive of the Section 787.5(a) charges made against ALCOA. The respondent in Iran Air was charged with causing the reexport of commodities from Germany to Iran without obtaining the reexport authorization required by Section 774.1(a) of the former EAR. This charge is similar to charges 1-50 made against ALCOA in this case. The court found that the regulations under which Iran Air was charged expressed no state of mind specification. 996 F.2d at 1257. The court recognized, however, that the statute left room for regulations that include a knowledge requirement for the imposition of civil penalties. Id. at 1259. Thus, not all EAR regulations impose strict liability. Section 787.5(a) of the former EAR, under which ALCOA is charged, is one of those rules. That regulation, as demonstrated herein, clearly establishes a scienter requirement as an element of proof for the imposition of civil penalties.

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regarding these exports. The documents the government asserts as being materially misleading provide all information necessary to reveal ESD's inadvertent error. Therefore, the charges must be dismissed.

## **ADMINISTRATIVE SANCTIONS**

### **1. Overview**

ALCOA presumes that the ALJ will find that ALCOA violated Section 787.6 of the former EAR based on ALCOA's admission that ESD exported potassium fluoride and sodium fluoride to Jamaica and Suriname on 50 occasions without the validated export licenses required by Section 772.1(b) of the former EAR. ALCOA recognizes that such violations of the EAR may result in administrative sanctions, including denial of export privileges, exclusion from practice, and/or civil penalties up to \$10,000 per violation.<sup>14</sup> However, these represent the maximum penalties that may be imposed. Denial of export privileges or exclusion from practice and maximum fines are sanctions typically reserved for egregious violations of the EAR which harm critical U.S. national security or foreign policy interests – which did not occur in this case. Such sanctions would be overwhelmingly severe and inappropriate in this case. In fact, the regulations in no way require imposition of any specific penalties. Indeed, the ALJ is charged with the responsibility of recommending the appropriate administrative sanctions in this case, or such other action as he or she deems appropriate.<sup>15</sup>

In light of the facts and circumstances of this case, as discussed herein, we respectfully request that the ALJ recommend that no administrative sanction be imposed on ALCOA for these violations. Alternatively, we respectfully request that the ALJ recommend only a modest civil penalty, and that the penalty be suspended in accordance with Section 766.17(c) of the EAR for a reasonable period of probation during which ESD must commit no other violations of the EAR. At the conclusion of such probationary period, and provided ESD has not violated the EAR, the civil penalty should be waived. In support of this request, ALCOA submits the following mitigating factors for the ALJ's consideration.

### **2. Mitigating Factors**

#### **a. No Willful Violations and Full Cooperation with BXA's Investigation**

As indicated above, ESD did not intentionally disregard the EAR licensing requirements or seek to circumvent any regulations. The exports were not made surreptitiously, nor were the nature of the commodities concealed or intentionally misrepresented on the Shipper's Export Declarations, bills of lading, and Customs

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<sup>14</sup> See 15 C.F.R. § 764.3(a).

<sup>15</sup> See 15 C.F.R. § 766.17(b)(2).

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declarations. ALCOA and ESD maintained export compliance procedures during the review period and sought in good faith to comply with the EAR. For many years prior to the period of review, ESD lawfully exported potassium fluoride and sodium fluoride to the ALCOA refineries in Jamaica and Suriname under a general license authority. Unfortunately, ESD failed to comprehend the application of the March 1991 EAR amendments to its shipments of these commodities. However, once the violations were discovered, ALCOA and ESD cooperated fully with BXA in its investigation.<sup>16</sup>

b. No Risk of Chemical Weapons Proliferation

There was no risk that the potassium fluoride and sodium fluoride exported by ESD to Jamaica and Suriname would be diverted to chemical weapons uses. The items were exported to refineries wholly owned or controlled by ALCOA in friendly countries that are not suspected of engaging in illicit weapons development. They were exported only in limited quantities as needed for the legitimate operations of those refineries. All of the commodities were completely consumed when used, and the refineries did not keep them in inventory or transfer them to any third parties.

c. BXA Likely Would Have Granted Validated Licenses Had ALCOA Made Application

Had ESD applied to BXA for the necessary validated licenses for these exports during the review period, the licenses would surely have been granted. All exports were to be made (and were made) to entities wholly owned or controlled and operated by ALCOA. The exports were intended for documented uses central to ALCOA's legitimate business activities. In the case of potassium fluoride, there is no identified substitute chemical. The amounts to be exported were consistent with the documented operational needs of the refineries. Neither Jamaica nor Suriname is included in Country Group D:3, which identifies those destinations of particular concern with respect to chemical weapons proliferation.<sup>17</sup> After the violations were detected, ALCOA applied for and BXA granted ESD validated licenses for shipments of potassium fluoride to Jamalco made after the review period.<sup>18</sup>

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<sup>16</sup> At various times during the pendency of the investigation, ALCOA has been commended by BXA enforcement officials for the level and extent of its cooperation.

<sup>17</sup> See 15 C.F.R. § 740, Supp. 1 (1997). Additionally, the Commerce Control List in the former regulations provided that sample shipments of the controlled chemicals could be shipped without a validated license to all countries except Iran, Syria, Libya, North Korea, and Cuba. See 15 C.F.R. § 799.1, Supp. 1 (1995).

<sup>18</sup> Copies of these licenses are appended hereto as Attachment 2.

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d. ALCOA's Improved Export Compliance Program

Prior to the initiation of the investigation by BXA, ALCOA began developing and implementing an expanded and more comprehensive export compliance program. ALCOA retained outside counsel and experts to assist in this effort. This undertaking resulted in the production and publication of a new ALCOA export compliance manual. In addition, ALCOA developed export control matrices for each U.S. business unit. These matrices are intended for use by sales professionals and their administrative staffs to identify export control issues on a product-by-product basis.

As part of its improved export compliance program, ALCOA produced a video to increase awareness of export control requirements. This video is used in conjunction with on-site training for each business unit.

ALCOA also appointed export liaisons for each of its business units, including ESD, who are responsible for disseminating export compliance information and implementing the export compliance program. Further, ALCOA's Legal Department monitors the Federal Register daily for changes to the EAR affecting ALCOA's products and operations, and disseminates this information to the export liaisons.

ALCOA is also developing a Denial List search application on its new company-wide intranet, or Common Information Infrastructure ("CII"). The CII will be accessible to all of ALCOA's business units from a web browser. It will maintain an updated Denial List, replacing the diskette database which is currently distributed on a monthly basis. ALCOA plans to include country group and control regime listings on the CII in the future.

As for ESD specifically, ALCOA has taken necessary steps to improve its export compliance. All key ESD employees have attended export compliance training seminars presented by BXA. Representatives from ALCOA's Legal Department have reviewed the revised Commerce Control List with ESD employees in on-site sessions, in order to identify and sensitize ESD staff to exported items that raise specific control issues. As new items are added, they are also reviewed for export licensing requirements. Because the export matrix used for ALCOA's commercial products does not seem feasible for the 100,000 items exported by ESD, ALCOA continues to explore alternative methods to automate and capture all relevant data concerning export controls. As ALCOA shifts to a more integrated, company-wide computer infrastructure, ESD will have access to additional data processing resources which will assist in the creation and maintenance of a detailed export compliance matrix. ESD staff consults with ALCOA's legal staff on export compliance issues.

This new export compliance program is designed to prevent the kind of errors that occurred during the review period. It also demonstrates ALCOA's commitment to understand and comply with all U.S. export laws and regulations.



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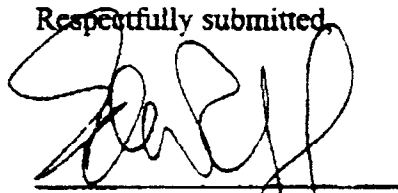
3. Conclusion

Given the inadvertent nature of the violations alleged by BXA, the factors in mitigation discussed above, and ALCOA's demonstrated good faith efforts to comply with all export regulations, no sanctions or, alternatively, suspended sanctions are appropriate in this case. Sanctions would serve no useful purpose because ALCOA recognizes the errors made, understands the importance of the export regulations, and seeks to comply with them.

DEMAND FOR HEARING

Pursuant to 15 C.F.R. § 766.6(c), ALCOA respectfully requests a hearing of this matter before the Administrative Law Judge as provided in 15 C.F.R. § 766.13.

Respectfully submitted,



Edward L. Rubinoff, P.C.

Samuel C. Straight

Akin, Gump, Strauss, Hauer, & Feld, L.L.P.

1333 New Hampshire Avenue, N.W.

Suite 400

Washington, DC 20036

and

Michael D. Scott

Aluminum Company of America

Room 1358

425 Sixth Avenue

ALCOA Building

Pittsburgh, PA 15219-1850

Counsel for Aluminum Company  
of America

Dated: January 20, 1998

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## ATTACHMENT 1

EXPORT LICENSE D200878

VALIDATED: SEP 15 1993

EXPIRES: SEP 30 1995



UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF EXPORT ADMINISTRATION  
P.O. Box 273, Ben Franklin Station  
Washington, DC 20044

THIS LICENSE AUTHORIZES THE LICENSEE TO CARRY OUT THE EXPORT TRANSACTION DESCRIBED ON THE LICENSE (INCLUDING ALL ATTACHMENTS). IT MAY NOT BE TRANSFERRED WITHOUT PRIOR WRITTEN APPROVAL OF THE OFFICE OF EXPORT LICENSING. THIS LICENSE HAS BEEN GRANTED IN RELIANCE ON REPRESENTATIONS MADE BY THE LICENSEE AND OTHERS IN CONNECTION WITH THE APPLICATION FOR EXPORT AND IS EXPRESSLY SUBJECT TO ANY CONDITIONS STATED ON THE LICENSE, AS WELL AS ALL APPLICABLE EXPORT CONTROL LAWS, REGULATIONS, RULES, AND ORDERS. THIS LICENSE IS SUBJECT TO REVISION, SUSPENSION, OR REVOCATION WITHOUT PRIOR NOTICE.

APPLICANT CONTROL NUMBER: C420294

ALUMINUM COMPANY OF AMERICA  
5602 JEFFERSON HWY  
NEW ORLEANS, LA 70183

PURCHASER:

ULTIMATE CONSIGNEE:  
SURINAME ALUMINUM COMPANY  
55 V H ROGERHOYSSTRAAT  
PARAMARIBO, SURINAME

INTERMEDIATE CONSIGNEE:

COMMODITIES:

QTY	DESCRIPTION	ECCN	TOTAL PRICE
4	COMPAQ 486/66M 510M BYTE, RAM, DOS & WIN, 8MB EXPANSION BOARD W/PN 128877, 8MB RAM COMPAQ QVISION, 150 MONITOR, COMPAQ 1.2 MB 5.25 FLOPPY DRIVE.	4A03	\$20,520
1	COMPAQ LITE 1.2 C 209 MBYTE HD. 8MB RAM DOS 6.0, WIN 3.1, CARRYING CASE COMPAQ QVISION 150 MONITOR, MICROSOFT MOUSE DESKTOOP EXPANSIN BASE, COMPAQ 9600 DATA/FAX INTERNAO MODEM.	4A03	\$6,497
1	COMPAQ 486/66M 8MB RAM DOS, WIN 3.1 QVISION MONITOR, 1.2MB R.2S INCH FLOPPYDRIVE.	4A03	\$4,087
TOTAL:			\$31,104

CTP DOES NOT EXCEED: 24.8

PROCESSING CODE:

THE EXPORT ADMINISTRATION REGULATIONS REQUIRE YOU TO TAKE THE FOLLOWING ACTIONS WHEN EXPORTING UNDER THE AUTHORITY OF THIS LICENSE.

A. RECORD THE EXPORT COMMODITY CONTROL NUMBER IN THE BLOCK

EXPORT LICENSE D200878

VALIDATED: SEP 15 1993

EXPIRES: SEP 30 1995



UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF EXPORT ADMINISTRATION  
P.O. Box 273, Ben Franklin Station  
Washington, DC 20044

-----  
PROVIDED ON EACH SHIPPER'S EXPORT DECLARATION (SED).

B. RECORD YOUR VALIDATED LICENSE NUMBER IN THE BLOCK  
PROVIDED ON EACH SED.

C. PLACE A DESTINATION CONTROL STATEMENT ON ALL BILLS OF LADING,  
AIRWAY BILLS, AND COMMERCIAL INVOICES.

RIDERS AND CONDITIONS:

1. NO RESALE, TRANSFER, OR REEXPORT OF THE ITEMS LISTED ON THIS LICENSE  
IS AUTHORIZED WITHOUT PRIOR AUTHORIZATION BY THE U.S. GOVERNMENT.

EXPORT LICENSE D185432

VALIDATED: FEB 11 1993

EXPIRES: FEB 28 1995



UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF EXPORT ADMINISTRATION  
P.O. Box 273, Ben Franklin Station  
Washington, DC 20044

EG12-57

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APPLICANT CONTROL NUMBER: C420315

ALUMINUM COMPANY OF AMERICA  
5602 JEFFERSON HWY  
NEW ORLEANS, LA 70183

PURCHASER:

ULTIMATE CONSIGNEE:  
JAMALCO PO  
WATERLOO ROAD  
KINGSTON, JAMAICA

INTERMEDIATE CONSIGNEE:

COMMODITIES:

QTY DESCRIPTION

ECCN

TOTAL  
PRICE

3 DELL 450/486-50 MHZ - 8 MB RAM - 320 MB HARD 4A03  
DRIVE - SUPER VGA, 1023I MONITOR (14", 1024 X  
768, .28MM) - 512 KB VIDEO RAM

\$9,975

2 HP LAZER JET IIIP - 4 MB RAM - OPTIONAL 4A03  
BOTTOM PAPER CARTRIDGE - LETTER SIZE & LEGAL  
SIZE - 10 FT. PARALLEL CABLE - 10 FT. SERIAL  
CABLE

\$3,150

TOTAL:

\$13,125

CTP DOES NOT EXCEED: 18.6

PROCESSING CODE:

THE EXPORT ADMINISTRATION REGULATIONS REQUIRE YOU TO TAKE THE FOLLOWING ACTIONS WHEN EXPORTING UNDER THE AUTHORITY OF THIS LICENSE.

A. RECORD THE EXPORT COMMODITY CONTROL NUMBER IN THE BLOCK PROVIDED ON EACH SHIPPER'S EXPORT DECLARATION (SED).

B. RECORD YOUR VALIDATED LICENSE NUMBER IN THE BLOCK PROVIDED ON EACH SED.

EXPORT LICENSE D185432

VALIDATED: FEB 11 1993

EXPIRES: FEB 28 1995



EG12-58  
UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF EXPORT ADMINISTRATION  
P.O. Box 273, Ben Franklin Station  
Washington, DC 20044

-----  
C. PLACE A DESTINATION CONTROL STATEMENT ON ALL BILLS OF LADING,  
AIRWAY BILLS, AND COMMERCIAL INVOICES.

RIDERS AND CONDITIONS:

1. NO RESALE, TRANSFER, OR REEXPORT OF THE COMMODITIES OR DATA LISTED ON THIS LICENSE IS AUTHORIZED WITHOUT PRIOR AUTHORIZATION BY THE U.S. GOVERNMENT.

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EXPORT LICENSE D172054

VALIDATED: JUL 28 1992

EXPIRES: JUL 31 1994



UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF EXPORT ADMINISTRATION  
P.O. Box 273, Ben Franklin Station  
Washington, DC 20044

THIS LICENSE AUTHORIZES THE LICENSEE TO CARRY OUT THE EXPORT TRANSACTION DESCRIBED ON THE LICENSE (INCLUDING ALL ATTACHMENTS). IT MAY NOT BE TRANSFERRED WITHOUT PRIOR WRITTEN APPROVAL OF THE OFFICE OF EXPORT LICENSING. THIS LICENSE HAS BEEN GRANTED IN RELIANCE ON REPRESENTATIONS MADE BY THE LICENSEE AND OTHERS IN CONNECTION WITH THE APPLICATION FOR EXPORT AND IS EXPRESSLY SUBJECT TO ANY CONDITIONS STATED ON THE LICENSE, AS WELL AS ALL APPLICABLE EXPORT CONTROL LAWS, REGULATIONS, RULES, AND ORDERS. THIS LICENSE IS SUBJECT TO REVISION, SUSPENSION, OR REVOCATION WITHOUT PRIOR NOTICE.

APPLICANT CONTROL NUMBER: C420490

ALUMINUM COMPANY OF AMERICA  
5602 JEFFERSON HWY  
NEW ORLEANS, LA 70183

PURCHASER:

ULTIMATE CONSIGNEE:  
JAMALCO KC876706CE  
13 WATERLOO ROAD  
KINGSTON, JAMAICA

INTERMEDIATE CONSIGNEE:

COMMODITIES:

QTY	DESCRIPTION	ECCN	TOTAL PRICE
	HONEYWELL EQUIPMENT	4A03	\$57,184
1	PROCESSOR RACK FOR A620 LOGIC CONTROLLER SYSTEM, HONEYWELL M/N 620-1690 (A)	4A03	\$561
1	620-36 CONTROL PROCESSOR MODULE WITH 32K. MEMORY, HONEYWELL M/N 620-3632 (A)	4A03	\$3,927
4	SERIAL INPUT/OUTPUT RACK FOR 621 I/O MODULES, HONEYWELL M/N 621-9990 (A)	4A03	\$1,054
5	SERIAL INPUT/OUTPUT HALF RACK FOR 621 I/O MODULES, BONEYWELL M/N 621-9991 (A)	4A03	\$1,063
9	SERIAL INPUT/OUTPUT MODULE (SIOM), HONEYWELL M/N 621-9940 (A)	4A03	\$4,055
9	INPUT/OUTPUT RACK POWER SUPPLY MODULE FOR OPERATION ON 115 VOLTS AC, 50 HZ, HONEYWELL M/N 621-9933 (A)	4A03	\$5,202
1	PROCESSOR RACK POWER SUPPLY MODULE FOR OPERATION ON 115 VOLTS AC, 50 HZ, HONEYWELL	4A03	\$323

EXPORT LICENSE D172054

VALIDATED: JUL 28 1992

EXPIRES: JUL 31 1994



UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF EXPORT ADMINISTRATION  
P.O. Box 273, Ben Franklin Station  
Washington, DC 20044

EB12-60

M/N 620-0041 (A)

35 32 POINT, 115 VAC, INPUT MODULE COMPLETE WITH 621-9977 FRONT MOUNTED TERMINAL BLOCK SET, HONEYWELL M/N 621-1180 (A)	4A03	\$15,768
1 HIGHWAY INTERFACE MODULE FOR OPERATION WITH A 620 SERIES CPM, HONEYWELL M/N 620-0081 (A)	4A03	\$5,100
1 SERIAL LINK MODULE (SLM), HONEYWELL M/N 621-9939 (A)	4A03	\$604
42 INPUT/OUTPUT SLOT BLANK COVERPLATE, HONEYWELL M/N 621-9900 (A)	4A03	\$714
1 LCN COAXIAL CABLE SET, 8 METERS LONG, CONSISTING OF TWO CABLES MARKED A & B, HONEYWELL M/N 51109181-008 (A)	4A03	\$313
1 PERSONAL COMPUTER INTERFACE MODULE 110V K2LCN (A)	4A03	\$14,000
1 NODE OVERLAY SOFTWARE LICENSE (A)	4D01	\$2,000
1 PERSONAL COMPUTER RESIDENT SOFTWARE (A)	4D01	\$2,500
TOTAL:		\$114,368

PROCESSING CODE:

THE EXPORT ADMINISTRATION REGULATIONS REQUIRE YOU TO TAKE THE FOLLOWING ACTIONS  
WHEN EXPORTING UNDER THE AUTHORITY OF THIS LICENSE.

- RECORD THE EXPORT COMMODITY CONTROL NUMBER IN THE BLOCK  
PROVIDED ON EACH SHIPPER'S EXPORT DECLARATION (SED).
- RECORD YOUR VALIDATED LICENSE NUMBER IN THE BLOCK  
PROVIDED ON EACH SED.
- PLACE A DESTINATION CONTROL STATEMENT ON ALL BILLS OF LADING,  
AIRWAY BILLS, AND COMMERCIAL INVOICES.



EXPORT LICENSE D194326

VALIDATED: JUN 18 1993

EXPIRES: JUN 30 1995



UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF EXPORT ADMINISTRATION  
P.O. Box 273, Ben Franklin Station  
Washington, DC 20044

EG612-61

THIS LICENSE AUTHORIZES THE LICENSEE TO CARRY OUT THE EXPORT TRANSACTION DESCRIBED ON THE LICENSE (INCLUDING ALL ATTACHMENTS). IT MAY NOT BE TRANSFERRED WITHOUT PRIOR WRITTEN APPROVAL OF THE OFFICE OF EXPORT LICENSING. THIS LICENSE HAS BEEN GRANTED IN RELIANCE ON REPRESENTATIONS MADE BY THE LICENSEE AND OTHERS IN CONNECTION WITH THE APPLICATION FOR EXPORT AND IS EXPRESSLY SUBJECT TO ANY CONDITIONS STATED ON THE LICENSE, AS WELL AS ALL APPLICABLE EXPORT CONTROL LAWS, REGULATIONS, RULES, AND ORDERS. THIS LICENSE IS SUBJECT TO REVISION, SUSPENSION, OR REVOCATION WITHOUT PRIOR NOTICE.

APPLICANT CONTROL NUMBER: C420308

ALUMINUM COMPANY OF AMERICA  
5602 JEFFERSON HWY  
NEW ORLEANS, LA 70183

PURCHASER:

SC 442570AE

ULTIMATE CONSIGNEE:  
SURINAME ALUMINUM CO  
55 V H HOGERHOYSSTRAAT  
PARAMARIBO, SURINAME

INTERMEDIATE CONSIGNEE:

COMMODITIES:

QTY DESCRIPTION

ECCN

TOTAL  
PRICE

1	DESKPRO/I 4/33I - 120W - 486DX/33 MHZ PROCESSOR - 8MB RAM, A20 MB HARD DRIVE - 1.44 MB DISK DRIVE - 3-1/2 IN. - 1.2 MB DISK DRIVE - 5-1/4 IN. - COMPAQ 4 MB MEMORY MODULE (80NS) - COMPAQ SVGA COLOR MONITOR - MOUSE, KEYBOARD 101	4A03	\$4,836
1	DESKPRO/M 4/66M-240 - 486DX2/M/66M-240 - 8MB RAM, 240 MB HARD DRIVE - 1.44 MB DISK DRIVE - 5-1/4 IN. - 1.2 MB DISK DRIVE - 5-1/4 IN. - COMPAQ Q VISION 150 COLOR MONITOR - MOUSE, AUDIO, Q VISION KEYBOARD 101	4A03	\$4,059

TOTAL: \$8,895

CTP DOES NOT EXCEED: 24.8

PROCESSING CODE:

THE EXPORT ADMINISTRATION REGULATIONS REQUIRE YOU TO TAKE THE FOLLOWING ACTIONS WHEN EXPORTING UNDER THE AUTHORITY OF THIS LICENSE.

- A. RECORD THE EXPORT COMMODITY CONTROL NUMBER IN THE BLOCK PROVIDED ON EACH SHIPPER'S EXPORT DECLARATION (SED).

E612-62

EXPORT LICENSE D194326

VALIDATED: JUN 18 1993

EXPIRES: JUN 30 1995



UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF EXPORT ADMINISTRATION  
P.O. Box 273, Ben Franklin Station  
Washington, DC 20044

B. RECORD YOUR VALIDATED LICENSE NUMBER IN THE BLOCK  
PROVIDED ON EACH SED.

C. PLACE A DESTINATION CONTROL STATEMENT ON ALL BILLS OF LADING,  
AIRWAY BILLS, AND COMMERCIAL INVOICES.

RIDERS AND CONDITIONS:

1. YOUR LICENSE/AUTHORIZATION IS APPROVED, HOWEVER, YOU DID NOT PROVIDE THE COMPOSITE THEORETICAL PERFORMANCE (CTP) OR OTHER PARAMETERS AS REQUIRED BY SECTION 776.10 OF THE EXPORT ADMINISTRATION REGULATIONS. THE REQUIRED PARAMETERS ARE LISTED AT THE END OF CATEGORY 4 WITHIN THE COMMERCE CONTROL LIST (SUPPLEMENT NO. 1 TO SECTION 799.1 OF THE EXPORT ADMINISTRATION REGULATIONS). FUTURE APPLICATIONS THAT DO NOT PROVIDE THESE PARAMETERS WILL BE RETURNED WITHOUT ACTION.

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USE.

EXPORT LICENSE D194325

VALIDATED: JUN 18 1993

EXPIRES: JUN 30 1995



UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF EXPORT ADMINISTRATION  
P.O. Box 273, Ben Franklin Station  
Washington, DC 20044

E612-63

- 
- A. RECORD THE EXPORT COMMODITY CONTROL NUMBER IN THE BLOCK PROVIDED ON EACH SHIPPER'S EXPORT DECLARATION (SED).
  - B. RECORD YOUR VALIDATED LICENSE NUMBER IN THE BLOCK PROVIDED ON EACH SED.
  - C. PLACE A DESTINATION CONTROL STATEMENT ON ALL BILLS OF LADING, AIRWAY BILLS, AND COMMERCIAL INVOICES.

RIDERS AND CONDITIONS:

1. YOUR LICENSE/AUTHORIZATION IS APPROVED, HOWEVER, YOU DID NOT PROVIDE THE COMPOSITE THEORETICAL PERFORMANCE (CTP) OR OTHER PARAMETERS AS REQUIRED BY SECTION 776.10 OF THE EXPORT ADMINISTRATION REGULATIONS. THE REQUIRED PARAMETERS ARE LISTED AT THE END OF CATEGORY 4 WITHIN THE COMMERCE CONTROL LIST (SUPPLEMENT NO.1 TO SECTION 799.1 OF THE EXPORT ADMINISTRATION REGULATIONS). FUTURE APPLICATIONS THAT DO NOT PROVIDE THESE PARAMETERS WILL BE RETURNED WITHOUT ACTION.

E612-64

EXPORT LICENSE D194327

VALIDATED: JUN 18 1993

EXPIRES: JUN 30 1995



UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF EXPORT ADMINISTRATION  
P.O. Box 273, Ben Franklin Station  
Washington, DC 20044

THIS LICENSE AUTHORIZES THE LICENSEE TO CARRY OUT THE EXPORT TRANSACTION DESCRIBED ON THE LICENSE (INCLUDING ALL ATTACHMENTS). IT MAY NOT BE TRANSFERRED WITHOUT PRIOR WRITTEN APPROVAL OF THE OFFICE OF EXPORT LICENSING. THIS LICENSE HAS BEEN GRANTED IN RELIANCE ON REPRESENTATIONS MADE BY THE LICENSEE AND OTHERS IN CONNECTION WITH THE APPLICATION FOR EXPORT AND IS EXPRESSLY SUBJECT TO ANY CONDITIONS STATED ON THE LICENSE, AS WELL AS ALL APPLICABLE EXPORT CONTROL LAWS, REGULATIONS, RULES, AND ORDERS. THIS LICENSE IS SUBJECT TO REVISION, SUSPENSION, OR REVOCATION WITHOUT PRIOR NOTICE.

APPLICANT CONTROL NUMBER: C420309

ALUMINUM COMPANY OF AMERICA  
5602 JEFFERSON HWY  
NEW ORLEANS, LA 70183

PURCHASER:

SA442392AE

ULTIMATE CONSIGNEE:  
SURINAME ALUMINUM CO  
55 V N HOGERHOYSSTRAAT  
PARAMARIBO, SURINAME

INTERMEDIATE CONSIGNEE:

## COMMODITIES:

QTY	DESCRIPTION	ECCN	TOTAL PRICE
1	COMPAQ PRO SIGNIA COMPUTER SERVER MODER 4-86/66 WITH 8MB RAM, 1020 IDA-2 DISK P/N 143720-004	4A03	\$7,855
1	COMPAQ Q-VISION 150 COLOR MONITOR	4A03	\$753
TOTAL:			\$8,608

CTP DOES NOT EXCEED: 24.8

PROCESSING CODE:

THE EXPORT ADMINISTRATION REGULATIONS REQUIRE YOU TO TAKE THE FOLLOWING ACTIONS WHEN EXPORTING UNDER THE AUTHORITY OF THIS LICENSE.

- RECORD THE EXPORT COMMODITY CONTROL NUMBER IN THE BLOCK PROVIDED ON EACH SHIPPER'S EXPORT DECLARATION (SED).
- RECORD YOUR VALIDATED LICENSE NUMBER IN THE BLOCK PROVIDED ON EACH SED.
- PLACE A DESTINATION CONTROL STATEMENT ON ALL BILLS OF LADING, AIRWAY BILLS, AND COMMERCIAL INVOICES.

EXPORT LICENSE D194327

VALIDATED: JUN 18 1993

EXPIRES: JUN 30 1995



UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF EXPORT ADMINISTRATION  
P.O. Box 273, Ben Franklin Station  
Washington, DC 20044

-----  
RIDERS AND CONDITIONS:

1. YOUR LICENSE/AUTHORIZATION IS APPROVED. HOWEVER, YOU DID NOT PROVIDE THE COMPOSITE THEORETICAL PERFORMANCE (CTP) OR OTHER PARAMETERS AS REQUIRED BY SECTION 776.10 OF THE EXPORT ADMINISTRATION REGULATIONS. THE REQUIRED PARAMETERS ARE LISTED AT THE END OF CATEGORY 4 WITHIN THE COMMERCE CONTROL LIST (SUPPLEMENT NO. 1 TO SECTION 799.1 OF THE EXPORT ADMINISTRATION REGULATIONS). FUTURE APPLICATIONS THAT DO NOT PROVIDE THESE PARAMETERS WILL BE RETURNED WITHOUT ACTION.

EXPORT LICENSE D196607

VALIDATED: JUL 20 1993

EXPIRES: JUL 31 1995



UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF EXPORT ADMINISTRATION  
P.O. Box 273, Ben Franklin Station  
Washington, DC 20044

E612-66

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APPLICANT CONTROL NUMBER: C420314

ALUMINUM COMPANY OF AMERICA  
5602 JEFFERSON HWY  
NEW ORLEANS, LA 70183

PURCHASER:

ULTIMATE CONSIGNEE:  
JAMALCO  
WATERLOO ROAD  
KINGSTON, JAMAICA

INTERMEDIATE CONSIGNEE:

COMMODITIES:

QTY	DESCRIPTION	ECCN	TOTAL PRICE
5	DELL 450/M SYSTEM 16 MB RAM, 320MB HARD DISK, 15 FS COLOR MONITOR, WINDOWS V3.1 AND DOS 6.0 PRELOADED, MICROSOFT SERIAL MOUSE, NE2000 ETHERNET CARD, DUAL FLOPPY DRIVE (3.5 IN BOOTABLE)	4A03	\$18,000
2	HP LASER JET 4M, 6MB MEMORY, OPTIONAL BOTTOM CARTRIDGE, LEGAL, EXECUTIVE AND A4 PAPER TRAY, 25 PARALLEL CABLE	4A03	\$4,250
TOTAL:			\$22,250

CTP DOES NOT EXCEED: 18.6

PROCESSING CODE:

THE EXPORT ADMINISTRATION REGULATIONS REQUIRE YOU TO TAKE THE FOLLOWING ACTIONS WHEN EXPORTING UNDER THE AUTHORITY OF THIS LICENSE.

- RECORD THE EXPORT COMMODITY CONTROL NUMBER IN THE BLOCK PROVIDED ON EACH SHIPPER'S EXPORT DECLARATION (SED).
- RECORD YOUR VALIDATED LICENSE NUMBER IN THE BLOCK PROVIDED ON EACH SED.

EXPORT LICENSE D196607

VALIDATED: JUL 20 1993

EXPIRES: JUL 31 1995



UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF EXPORT ADMINISTRATION  
P.O. Box 273, Ben Franklin Station  
Washington, DC 20044

E612-67

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APPLICANT CONTROL NUMBER: C420314

ALUMINUM COMPANY OF AMERICA  
5602 JEFFERSON HWY  
NEW ORLEANS, LA 70183

PURCHASER:

ULTIMATE CONSIGNEE:  
JAMALCO  
WATERLOO ROAD  
KINGSTON, JAMAICA

INTERMEDIATE CONSIGNEE:

COMMODITIES:

QTY DESCRIPTION

ECCN

TOTAL  
PRICE

5 DELL 450/M SYSTEM 16 MB RAM, 320MB HARD  
DISK, 15 FS COLOR MONITOR, WINDOWS V3.1 AND  
DOS 6.0 PRELOADED, MICROSOFT SERIAL MOUSE,  
NE2000 ETHERNET CARD, DUAL FLOPPY DRIVE (3.5  
IN BOOTABLE)

4A03

\$18,000

2 HP LASER JET 4M, 6MB MEMORY, OPTIONAL BOTTOM 4A03  
CARTRIDGE, LEGAL, EXECUTIVE AND A4 PAPER  
TRAY, 25 PARALLEL CABLE

\$4,250

TOTAL:

\$22,250

CTP DOES NOT EXCEED: 18.6

PROCESSING CODE:

THE EXPORT ADMINISTRATION REGULATIONS REQUIRE YOU TO TAKE THE FOLLOWING ACTIONS WHEN EXPORTING UNDER THE AUTHORITY OF THIS LICENSE.

- A. RECORD THE EXPORT COMMODITY CONTROL NUMBER IN THE BLOCK PROVIDED ON EACH SHIPPER'S EXPORT DECLARATION (SED).
- B. RECORD YOUR VALIDATED LICENSE NUMBER IN THE BLOCK PROVIDED ON EACH SED.

EXPORT LICENSE D196607

VALIDATED: JUL 20 1993

EXPIRES: JUL 31 1995



UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF EXPORT ADMINISTRATION  
P.O. Box 273, Ben Franklin Station  
Washington, DC 20044

E612-68

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C. PLACE A DESTINATION CONTROL STATEMENT ON ALL BILLS OF LADING,  
AIRWAY BILLS, AND COMMERCIAL INVOICES.



EXPORT LICENSE D196243

VALIDATED: JUL 13 1993

EXPIRES: JUL 31 1995



UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF EXPORT ADMINISTRATION  
P.O. Box 273, Ben Franklin Station  
Washington, DC 20044

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APPLICANT CONTROL NUMBER: C420311

ALUMINUM COMPANY OF AMERICA  
5602 JEFFERSON HWY  
NEW ORLEANS, LA 70183

PURCHASER:

ULTIMATE CONSIGNEE:  
JAMALCO  
WATERLOO ROAD  
KINGSTON, JAMAICA

INTERMEDIATE CONSIGNEE:

COMMODITIES:

QTY DESCRIPTION

ECCN

TOTAL  
PRICE

3 DELL 450/M PC -8MB RAM -230MB HARD DRIVE  
-DUAL DENSITY FLOPPY DRIVE (3-1/2 IN.  
BOOTABLE) NE2000 CARD -DOS 6.0 AND WINDOWS  
3.1 PRELOADED.

4A03

\$7,725

2 HP LASTERJET IIIP -4MB RAM -25-IN-ONE  
CARTRIDGE -OPTIONAL PAPER FEED ASSEMBLY

4A96

\$3,210

TOTAL:

\$10,935

CTP DOES NOT EXCEED: 18.61

PROCESSING CODE:

THE EXPORT ADMINISTRATION REGULATIONS REQUIRE YOU TO TAKE THE FOLLOWING ACTIONS WHEN EXPORTING UNDER THE AUTHORITY OF THIS LICENSE.

- A. RECORD THE EXPORT COMMODITY CONTROL NUMBER IN THE BLOCK PROVIDED ON EACH SHIPPER'S EXPORT DECLARATION (SED).
- B. RECORD YOUR VALIDATED LICENSE NUMBER IN THE BLOCK PROVIDED ON EACH SED.
- C. PLACE A DESTINATION CONTROL STATEMENT ON ALL BILLS OF LADING.

EXPORT LICENSE D196243

VALIDATED: JUL 13 1993

EXPIRES: JUL 31 1995



UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF EXPORT ADMINISTRATION  
P.O. Box 273, Ben Franklin Station  
Washington, DC 20044

AIRWAY BILLS, AND COMMERCIAL INVOICES.

RIDERS AND CONDITIONS:

1. YOUR LICENSE/AUTHORIZATION IS APPROVED, HOWEVER, YOU DID NOT PROVIDE THE COMPOSITE THEORETICAL PERFORMANCE (CTP) OR OTHER PARAMETERS AS REQUIRED BY SECTION 776.10 OF THE EXPORT ADMINISTRATION REGULATIONS. THE REQUIRED PARAMETERS ARE LISTED AT THE END OF CATEGORY 4 WITHIN THE COMMERCE CONTROL LIST (SUPPLEMENT NO. 1 TO SECTION 799.1 OF THE EXPORT ADMINISTRATION REGULATIONS). FUTURE APPLICATIONS THAT DO NOT PROVIDE THESE PARAMETERS WILL BE RETURNED WITHOUT ACTION.

EXPORT LICENSE D196609

VALIDATED: JUL 20 1993

EXPIRES: JUL 31 1995



UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF EXPORT ADMINISTRATION  
P.O. Box 273, Ben Franklin Station  
Washington, DC 20044

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APPLICANT CONTROL NUMBER: C420313

ALUMINUM COMPANY OF AMERICA  
5602 JEFFERSON HWY  
NEW ORLEANS, LA 70183

PURCHASER:

ULTIMATE CONSIGNEE:  
JAMALCO  
WATERLOO ROAD  
KINGSTON, JAMAICA

INTERMEDIATE CONSIGNEE:

COMMODITIES:

QTY DESCRIPTION

ECCN

TOTAL  
PRICE

7 DELL 450/M SYSTEM, 8MB MEMORY, 320MB MEMORY, 4A03  
15FS COLOR MONITOR, WINDOWS V3.1 AND DOS 6.0  
PRELOADED, MICROSOFT SERIAL MOUSE, NE2000  
ETHERNET CARD, DUAL FLOPPY DRIVE (3.5 IN.  
BOOTABLE)

\$22,225

1 LASER JET 4M, 6MB RAM, OPTIONAL BOTTOM  
CARTRIDGE, LEGAL EXECUTIVE AND 4A PAPER  
TRAY, 25 FT PARELLAL CABLE.

4A03

\$2,125

TOTAL:

\$24,350

CTP DOES NOT EXCEED: 18.6

PROCESSING CODE:

THE EXPORT ADMINISTRATION REGULATIONS REQUIRE YOU TO TAKE THE FOLLOWING ACTIONS WHEN EXPORTING UNDER THE AUTHORITY OF THIS LICENSE.

- A. RECORD THE EXPORT COMMODITY CONTROL NUMBER IN THE BLOCK PROVIDED ON EACH SHIPPER'S EXPORT DECLARATION (SED).
- B. RECORD YOUR VALIDATED LICENSE NUMBER IN THE BLOCK PROVIDED ON EACH SED.

E612-72

EXPORT LICENSE D196609

VALIDATED: JUL 20 1993

EXPIRES: JUL 31 1995



UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF EXPORT ADMINISTRATION  
P.O. Box 273, Ben Franklin Station  
Washington, DC 20044

C. PLACE A DESTINATION CONTROL STATEMENT ON ALL BILLS OF LADING,  
AIRWAY BILLS, AND COMMERCIAL INVOICES.

RIDERS AND CONDITIONS:

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EXPORT LICENSE D197397  
VALIDATED: JUL 28 1993  
EXPIRES: JUL 31 1993



UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF EXPORT ADMINISTRATION  
P.O. Box 273, Ben Franklin Station  
Washington, DC 20044

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APPLICANT CONTROL NUMBER: C603202

ALUMINUM COMPANY OF AMERICA  
5602 JEFFERSON HWY  
NEW ORLEANS, LA 70183

PURCHASER:

JA 263968AE

ULTIMATE CONSIGNEE:  
JAMALCO  
WATERLOO ROAD  
KINGSTON, JAMAICA

INTERMEDIATE CONSIGNEE:

COMMODITIES:			TOTAL
QTY	DESCRIPTION	ECCN	PRICE
4	DELL 450/ M SY., 16MB RAM, 320MB HARD DRIVE, 4A03 DUAL FLOPPY DRIVE (3.5 INCH BOOTABLE), 15FS COLOR MONITOR, NE2000 CARD, WINDOWS 3.1 AND DOS 6.0 PRELOADED, MICROSOFT SERIAL MOUSE.		\$14,400
TOTAL:			\$14,400

PROCESSING CODE:

THE EXPORT ADMINISTRATION REGULATIONS REQUIRE YOU TO TAKE THE FOLLOWING ACTIONS WHEN EXPORTING UNDER THE AUTHORITY OF THIS LICENSE.

- RECORD THE EXPORT COMMODITY CONTROL NUMBER IN THE BLOCK PROVIDED ON EACH SHIPPER'S EXPORT DECLARATION (SED).
- RECORD YOUR VALIDATED LICENSE NUMBER IN THE BLOCK PROVIDED ON EACH SED.
- PLACE A DESTINATION CONTROL STATEMENT ON ALL BILLS OF LADING, AIRWAY BILLS, AND COMMERCIAL INVOICES.

EXPORT LICENSE D197398  
VALIDATED: JUL 29 1993  
EXPIRES: JUL 31 1995



UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF EXPORT ADMINISTRATION  
P.O. Box 273, Ben Franklin Station  
Washington, DC 20044

EG62-174

THIS LICENSE AUTHORIZES THE LICENSEE TO CARRY OUT THE EXPORT TRANSACTION DESCRIBED ON THE LICENSE (INCLUDING ALL ATTACHMENTS). IT MAY NOT BE TRANSFERRED WITHOUT PRIOR WRITTEN APPROVAL OF THE OFFICE OF EXPORT LICENSING. THIS LICENSE HAS BEEN GRANTED IN RELIANCE ON REPRESENTATIONS MADE BY THE LICENSEE AND OTHERS IN CONNECTION WITH THE APPLICATION FOR EXPORT AND IS EXPRESSLY SUBJECT TO ANY CONDITIONS STATED ON THE LICENSE, AS WELL AS ALL APPLICABLE EXPORT CONTROL LAWS, REGULATIONS, RULES, AND ORDERS. THIS LICENSE IS SUBJECT TO REVISION, SUSPENSION, OR REVOCATION WITHOUT PRIOR NOTICE.

APPLICANT CONTROL NUMBER: C603201

ALUMINUM COMPANY OF AMERICA  
5602 JEFFERSON HWY  
NEW ORLEANS, LA 70183

PURCHASER:

JA 263986AE

ULTIMATE CONSIGNEE:  
JAMALCO  
WATERLOO ROAD  
KINGSTON, JAMAICA

INTERMEDIATE CONSIGNEE:

COMMODITIES:

QTY DESCRIPTION

ECCN

TOTAL  
PRICE

5	DEL 450/M, INTEL DX50D 486, 16MB RAM, 320MB HARD DRIVE, ULTRASCAN 15 FS COLOR MONITOR, DOS 5.0, WINDOWS 3.1 PRELOADED, DUAL-MEDIA FLOPPY DRIVES (3.5 IN. BOOTABLE), MSCROSOFT SERIAL MOUSE, NE2000 CARD, 128 KB CACHE	4A03	\$18,000
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TOTAL: \$18,000

CTP DOES NOT EXCEED: 18.6

PROCESSING CODE:

THE EXPORT ADMINISTRATION REGULATIONS REQUIRE YOU TO TAKE THE FOLLOWING ACTIONS WHEN EXPORTING UNDER THE AUTHORITY OF THIS LICENSE.

- RECORD THE EXPORT COMMODITY CONTROL NUMBER IN THE BLOCK PROVIDED ON EACH SHIPPER'S EXPORT DECLARATION (SED).
- RECORD YOUR VALIDATED LICENSE NUMBER IN THE BLOCK PROVIDED ON EACH SED.
- PLACE A DESTINATION CONTROL STATEMENT ON ALL BILLS OF LADING, AIRWAY BILLS, AND COMMERCIAL INVOICES.

EXPORT LICENSE 0197398

VALIDATED: JUL 29 1993

EXPIRES: JUL 31 1995



UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF EXPORT ADMINISTRATION  
P.O. Box 273, Ben Franklin Station  
Washington, DC 20044

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RIDERS AND CONDITIONS:

1. NO RESALE, TRANSFER, OR REEXPORT OF THE ITEMS LISTED ON THIS LICENSE  
IS AUTHORIZED WITHOUT PRIOR AUTHORIZATION BY THE U.S. GOVERNMENT.

EXPORT LICENSE D198612

VALIDATED: AUG 13 1993

EXPIRES: AUG 31 1995



UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF EXPORT ADMINISTRATION  
P.O. Box 273, Ben Franklin Station  
Washington, DC 20044

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APPLICANT CONTROL NUMBER: C420293

ALUMINUM COMPANY OF AMERICA  
15602 JFFERSON HWY  
NEW ORLEANS, LA 70183

PURCHASER:

ULTIMATE CONSIGNEE:  
JAMALCO  
WATERLOO ROAD  
KINGSTON, JAMAICA

INTERMEDIATE CONSIGNEE:

COMMODITIES:

QTY DESCRIPTION

ECCN

TOTAL  
PRICE

6 HEWLETT PACKARD LASERJET SERIES IIIP PRINTER 4A03  
WITH:-4MB RAM-OPTIONAL LOWER TRAY  
CARTRIDGE-LETTER-SIZE TRAY-PARALLEL PRINTER  
CABLE

\$7,674

TOTAL:

\$7,674

PROCESSING CODE:

THE EXPORT ADMINISTRATION REGULATIONS REQUIRE YOU TO TAKE THE FOLLOWING ACTIONS WHEN EXPORTING UNDER THE AUTHORITY OF THIS LICENSE.

- A. RECORD THE EXPORT COMMODITY CONTROL NUMBER IN THE BLOCK PROVIDED ON EACH SHIPPER'S EXPORT DECLARATION (SED).
- B. RECORD YOUR VALIDATED LICENSE NUMBER IN THE BLOCK PROVIDED ON EACH SED.
- C. PLACE A DESTINATION CONTROL STATEMENT ON ALL BILLS OF LADING, AIRWAY BILLS, AND COMMERCIAL INVOICES.

RIDERS AND CONDITIONS:



EXPORT LICENSE D198612

VALIDATED: AUG 13 1993

EXPIRES: AUG 31 1995



UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF EXPORT ADMINISTRATION  
P.O. Box 273, Ben Franklin Station  
Washington, DC 20044

EG12-177

1. YOUR LICENSE IS APPROVED BUT OUR REVIEW INDICATES THAT SOME OF THE ITEMS LISTED ON YOUR LICENSE APPLICATION MAY QUALIFY FOR SHIPMENT UNDER A GENERAL LICENSE (REFER TO PART 771 OF THE EXPORT ADMINISTRATION REGULATIONS FOR A LISTING OF GENERAL LICENSES). IF YOU WISH THE DEPARTMENT OF COMMERCE TO DETERMINE THE SPECIFIC AUTHORIZATION(S) THAT MAY BE AVAILABLE TO YOU, IN ORDER TO PRECLUDE THE SUBMISSION OF FUTURE LICENSE APPLICATIONS, YOU MAY REQUEST AN OFFICIAL CLASSIFICATION.

SUBMIT YOUR REQUEST ALONG WITH COMPLETE INFORMATION, INCLUDING ALL RELEVANT DOCUMENTATION AND SPECIFICATIONS, (REFER TO SECTION 799.1(G) OF THE EXPORT ADMINISTRATION REGULATIONS) TO THE BUREAU OF EXPORT ADMINISTRATION, OFFICE OF TECHNOLOGY AND POLICY ANALYSIS, ATTN: "COMMODITY CLASSIFICATION REQUEST", P.O. BOX 273, WASHINGTON, D.C. 20044. COURIER DELIVERIES CAN BE MADE TO THE U.S. DEPARTMENT OF COMMERCE, OFFICE OF TECHNOLOGY AND POLICY ANALYSIS, TECHNICAL SUPPORT STAFF, ROOM 4069, 14TH STREET & PENNSYLVANIA AVENUE, N.W., WASHINGTON, D.C. 20230. TELEPHONE NO. (202) 482-4145. FACSIMILE NO. (202) 482-5708.

EXPORT LICENSE D173392

VALIDATED: AUG 18 1992

EXPIRES: AUG 31 1994



UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF EXPORT ADMINISTRATION  
P.O. Box 273, Ben Franklin Station  
Washington, DC 20044

B. RECORD YOUR VALIDATED LICENSE NUMBER IN THE BLOCK  
PROVIDED ON EACH SED.

C. PLACE A DESTINATION CONTROL STATEMENT ON ALL BILLS OF LADING,  
AIRWAY BILLS, AND COMMERCIAL INVOICES.

RIDERS AND CONDITIONS:

1. NO RESALE, TRANSFER, OR REEXPORT OF THE COMMODITIES OR DATA LISTED ON THIS LICENSE IS AUTHORIZED WITHOUT PRIOR AUTHORIZATION BY THE U.S. GOVERNMENT.
2. YOUR LICENSE/AUTHORIZATION IS APPROVED, HOWEVER, YOU DID NOT PROVIDE THE PROCESSING DATA RATE (PDR) AS REQUIRED BY SUPPLEMENT 1 TO PART 799.1, ECCN 1565A OF THE EXPORT ADMINISTRATION REGULATIONS (EAR). PDR SHOULD BE PROVIDED IN MEGABITS PER SECOND. THE DEFINITION OF PDR CAN BE FOUND IN ADVISORY NOTE 16 TO ECCN 1565A, EAR.

E612-79

## ATTACHMENT 2

EXPORT LICENSE D229815

VALIDATED: MAY 30 1996

EXPIRES: MAY 31 1998



UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF EXPORT ADMINISTRATION  
P.O. Box 273, Ben Franklin Station  
Washington, DC 20044

THIS LICENSE AUTHORIZES THE LICENSEE TO CARRY OUT THE EXPORT TRANSACTION DESCRIBED ON THE LICENSE (INCLUDING ALL ATTACHMENTS). IT MAY NOT BE TRANSFERRED WITHOUT PRIOR WRITTEN APPROVAL OF THE OFFICE OF EXPORT LICENSING. THIS LICENSE HAS BEEN GRANTED IN RELIANCE ON REPRESENTATIONS MADE BY THE LICENSEE AND OTHERS IN CONNECTION WITH THE APPLICATION FOR EXPORT AND IS EXPRESSLY SUBJECT TO ANY CONDITIONS STATED ON THE LICENSE, AS WELL AS ALL APPLICABLE EXPORT CONTROL LAWS, REGULATIONS, RULES, AND ORDERS. THIS LICENSE IS SUBJECT TO REVISION, SUSPENSION, OR REVOCATION WITHOUT PRIOR NOTICE.

APPLICANT CONTROL NUMBER: CS43341

ALCOA ALUMINA & CHEMICALS L.L.C.  
425 SIXTH AVENUE, ALCOA BUILDING  
PITTSBURGH, PA 15219-1850

PURCHASER:

ULTIMATE CONSIGNEE:  
SURINAME ALUMINUM COMPANY, L.L.C.  
13 V.H.HOGERHUYSSSTRAAT  
PARAMARIBO, SURINAM

INTERMEDIATE CONSIGNEE:

COMMODITIES:

QTY DESCRIPTION

ECCN

TOTAL  
PRICE

550 POTASSIUM FLUORIDE; C.A.S. #7789-23-3.

1C60

\$3,108

TOTAL:

\$3,108

PROCESSING CODE:

THE EXPORT ADMINISTRATION REGULATIONS REQUIRE YOU TO TAKE THE FOLLOWING ACTIONS WHEN EXPORTING UNDER THE AUTHORITY OF THIS LICENSE.

- A. RECORD THE EXPORT COMMODITY CONTROL NUMBER IN THE BLOCK PROVIDED ON EACH SHIPPER'S EXPORT DECLARATION (SED).
- B. RECORD YOUR VALIDATED LICENSE NUMBER IN THE BLOCK PROVIDED ON EACH SED.
- C. PLACE A DESTINATION CONTROL STATEMENT ON ALL BILLS OF LADING, AIRWAY BILLS, AND COMMERCIAL INVOICES.

RIDERS AND CONDITIONS:

1. NO USE IN CHEMICAL OR BIOLOGICAL WEAPON MANUFACTURE OR APPLICATIONS.

EXPORT LICENSE D173392

VALIDATED: AUG 18 1992

EXPIRES: AUG 31 1994



UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF EXPORT ADMINISTRATION  
P.O. Box 273, Ben Franklin Station  
Washington, DC 20044

THIS LICENSE AUTHORIZES THE LICENSEE TO CARRY OUT THE EXPORT TRANSACTION DESCRIBED ON THE LICENSE (INCLUDING ALL ATTACHMENTS). IT MAY NOT BE TRANSFERRED WITHOUT PRIOR WRITTEN APPROVAL OF THE OFFICE OF EXPORT LICENSING. THIS LICENSE HAS BEEN GRANTED IN RELIANCE ON REPRESENTATIONS MADE BY THE LICENSEE AND OTHERS IN CONNECTION WITH THE APPLICATION FOR EXPORT AND IS EXPRESSLY SUBJECT TO ANY CONDITIONS STATED ON THE LICENSE, AS WELL AS ALL APPLICABLE EXPORT CONTROL LAWS, REGULATIONS, RULES, AND ORDERS. THIS LICENSE IS SUBJECT TO REVISION, SUSPENSION, OR REVOCATION WITHOUT PRIOR NOTICE.

APPLICANT CONTROL NUMBER: C420492

ALUMINUM COMPANY OF AMERICA  
5602 JEFFERSON HWY  
NEW ORLEANS, LA 70183

PURCHASER:

ULTIMATE CONSIGNEE:  
SURINAME ALUMINUM COMPANY  
55 VH HOGERHUYSSSTRAAT  
PARAMARIBO, SURINAME

INTERMEDIATE CONSIGNEE:

COMMODITIES:

QTY	DESCRIPTION	ECCN	TOTAL PRICE
1	MODEL: MP-CDHG03, REDUNDANT HIWAY GATEWAY 68020, 2MW, R210M1 (A)	4A03	\$37,039
1	MODEL: MP-CAB775, 77 IN. CABINET W/DUAL POWER ENTRIES-BLUE (A)	4A03	\$2,975
1	51109181-030 LCN COAX CABLE SET (30M PAIR) (A)	4A03	\$536
1	R210M1 COMPUTER GATEWAY 68020, 2MW (A)	4A03	\$25,883
4	ADDITIONAL SETS OF DOCUMENTATION (A)	4A03	\$1,858
TOTAL:			\$68,291

PROCESSING CODE:

THE EXPORT ADMINISTRATION REGULATIONS REQUIRE YOU TO TAKE THE FOLLOWING ACTIONS WHEN EXPORTING UNDER THE AUTHORITY OF THIS LICENSE.

- A. RECORD THE EXPORT COMMODITY CONTROL NUMBER IN THE BLOCK PROVIDED ON EACH SHIPPER'S EXPORT DECLARATION (SED).

EXPORT LICENSE D229815

VALIDATED: MAY 30 1996

EXPIRES: MAY 31 1998



E612-82  
UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF EXPORT ADMINISTRATION  
P.O. Box 273, Ben Franklin Station  
Washington, DC 20044

- 
2. APPLICANT MUST INFORM CONSIGNEE OF ALL LICENSE CONDITIONS.
  3. NO RESALE, TRANSFER, OR REEXPORT OF THE ITEMS LISTED ON THIS LICENSE IS AUTHORIZED WITHOUT PRIOR AUTHORIZATION BY THE U.S. GOVERNMENT.

30.5554 8.15.81  
EG12-83 7

FROM MICHAEL D. SCOTT  
LEGAL DEPARTMENT  
PITTSBURGH OFFICE - 1358

TO LARRY LANGEVIN  
EXPORT SUPPLY  
NEW ORLEANS

**VIA FACSIMILE**

JUNE 12, 1996

**RE: VALIDATED EXPORT LICENSE AUTHORIZING SHIPMENT OF  
POTASSIUM FLUORIDE TO SURINAM**

---

Attached is a copy of the validated Export License authorizing the shipment of Potassium Fluoride to Surinam.

The following requirements **MUST** be observed in connection with any shipments under this license:

- 1) Record the applicable Export Commodity Control Number in the block provided on each SED. - 1C60
- 2) Record the validated license number in the block provided on each SED - D229815
- 3) Place a Destination Control Statement on ALL bills of Lading, Airway Bills and Commercial Invoices:

**"THESE COMMODITIES WERE EXPORTED FROM THE UNITED STATES IN ACCORDANCE WITH THE EXPORT ADMINISTRATION REGULATIONS. DIVERSION CONTRARY TO U.S. LAW IS PROHIBITED."**

Additionally, the license is subject to the following specific conditions:

- a) The potassium fluoride may not be used in chemical or biological weapons manufacture or applications.
- b) Suralco must be informed of all license conditions.
- c) No resale, transfer or export of the potassium fluoride is authorized without the prior authorization of the US Government.

Please comply with Condition (b) by sending a copy of this memorandum and confirm the recipient(s) to me.



LEGAL DEPARTMENT

LARRY LANGEVIN

June 12, 1996

PAGE 2

EC12-84

The license covers shipments of an aggregate 550 Kg of potassium fluoride. No shipment under the license may occur after May 31, 1998. Accordingly, you will have to monitor shipments against the license so that an application for a new license can be made well (at least 90 days) in advance of exhaustion of the authorized quantity or expiration of the license.

Please feel free to call me at Pittsburgh Extension 2391 to discuss any aspect the license or shipments under it.

Michael D. Scott/gf

MICHAEL D. SCOTT

MDS:BJS

cc: Henry Sands, New Orleans  
Peter Bailey, Pittsburgh, 24



EXPORT LICENSE D239596

VALIDATED: MAY 30 1997

EXPIRES: MAY 31 1999



UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF EXPORT ADMINISTRATION  
P.O. Box 273, Ben Franklin Station  
Washington, DC 20044

E612-85

THIS LICENSE AUTHORIZES THE LICENSEE TO CARRY OUT THE EXPORT TRANSACTION DESCRIBED ON THE LICENSE (INCLUDING ALL ATTACHMENTS). IT MAY NOT BE TRANSFERRED WITHOUT PRIOR WRITTEN APPROVAL OF THE OFFICE OF EXPORT LICENSING. THIS LICENSE HAS BEEN GRANTED IN RELIANCE ON REPRESENTATIONS MADE BY THE LICENSEE AND OTHERS IN CONNECTION WITH THE APPLICATION FOR EXPORT AND IS EXPRESSLY SUBJECT TO ANY CONDITIONS STATED ON THE LICENSE, AS WELL AS ALL APPLICABLE EXPORT CONTROL LAWS, REGULATIONS, RULES, AND ORDERS. THIS LICENSE IS SUBJECT TO REVISION, SUSPENSION, OR REVOCATION WITHOUT PRIOR NOTICE.

APPLICANT CONTROL NUMBER: Z010141

ALCOA ALUMINA & CHEMICALS, L.L.C.  
425 SIXTH AVENUE, ALCOA BUILDING  
PITTSBURGH, PA 15219-1850

PURCHASER:  
SURINAME ALUMINUM COMPANY, L.L.C.  
13 V.H. HOGERHUYSSSTRAAT  
PARAMARIBO, SURINAM

ULTIMATE CONSIGNEE:  
SURINAM ALUMINUM COMPANY, L.L.C.  
13 V.H. HOGERHUYSSSTRAAT  
PARAMARIBO, SURINAM

INTERMEDIATE CONSIGNEE:

COMMODITIES:

QTY DESCRIPTION

ECCN

TOTAL  
PRICE

550 POTASSIUM FLUORIDE \_ C.A.S. #7789-23-3;  
ECCN# 1C350.A.39; 550 KILOGRAMS

1C350

\$3,300

TOTAL: \$3,300

THE EXPORT ADMINISTRATION REGULATIONS REQUIRE YOU TO TAKE THE FOLLOWING ACTIONS WHEN EXPORTING UNDER THE AUTHORITY OF THIS LICENSE.

- A. RECORD THE EXPORT COMMODITY CONTROL NUMBER IN THE BLOCK PROVIDED ON EACH SHIPPER'S EXPORT DECLARATION (SED).
- B. RECORD YOUR VALIDATED LICENSE NUMBER IN THE BLOCK PROVIDED ON EACH SED.
- C. PLACE A DESTINATION CONTROL STATEMENT ON ALL BILLS OF LADING, AIRWAY BILLS, AND COMMERCIAL INVOICES.

RIDERS AND CONDITIONS:

1. APPLICANT MUST INFORM CONSIGNEE OF ALL LICENSE CONDITIONS.
2. NO RESALE, TRANSFER, OR REEXPORT OF THE ITEMS LISTED ON THIS LICENSE

EXPORT LICENSE D239596

VALIDATED: MAY 30 1997

EXPIRES: MAY 31 1999



UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF EXPORT ADMINISTRATION  
P.O. Box 273, Ben Franklin Station  
Washington, DC 20044

IS AUTHORIZED WITHOUT PRIOR AUTHORIZATION BY THE U.S. GOVERNMENT.

3. NO USE IN CHEMICAL OR BIOLOGICAL WEAPONS MANUFACTURE OR APPLICATIONS

FROM LAURIE R. MANSELL  
LEGAL DEPARTMENT  
PITTSBURGH OFFICE - 13

TO LARRY LANGEVIN  
EXPORT SUPPLY DIVISION  
NEW ORLEANS, LA

JUNE 6, 1997

**RE: SURALCO POTASSIUM FLUORIDE LICENSE**

---

Attached is a copy of Commerce Dept. License #D239596 for the export of 550 kgs. of potassium fluoride to Suralco. This license expires when either the total quantity allowed under the license has been shipped or on May 31, 1999, whichever occurs first.

Please note that there are certain requirements to follow when exporting under this license. These requirements are listed on the bottom of the license and include the following:

1. you must record the ECCN (1C350.A.39) in the appropriate block on the SED;
2. you must record the license number (D239596) in the appropriate block in the SED; and
3. you must place a destination control statement on all bills of lading, airway bills and commercial invoices. If you do not already have sample language for this statement, please let me know.

Additionally, the following riders and conditions appear on the license and must be complied with:

1. you must inform Suralco of all of the conditions listed on the license. Please do this in writing and copy me on the memo so that we have a copy for our file.
2. you may not resell, transfer or reexport the potassium fluoride without the authorization of the U.S. Government.
3. the potassium fluoride may not be used in chemical or biological weapons manufacture or applications.

If you have any questions about the license or the restrictions listed on it, please call me in Pittsburgh at X2576.

  
LAURIE R. MANSELL

Attach.

cc: Henry Sands - New Orleans (w/out attach.)  
Michael Scott - Pittsburgh - 13 (w/out attach)



LEGAL DEPARTMENT

E612-88

EXPORT LICENSE D246750

VALIDATED: DEC 11 1997

EXPIRES: DEC 31 1999



UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF EXPORT ADMINISTRATION  
P.O. Box 273, Ben Franklin Station  
Washington, DC 20044

THIS LICENSE AUTHORIZES THE LICENSEE TO CARRY OUT THE EXPORT TRANSACTION DESCRIBED ON THE LICENSE (INCLUDING ALL ATTACHMENTS). IT MAY NOT BE TRANSFERRED WITHOUT PRIOR WRITTEN APPROVAL OF THE OFFICE OF EXPORT LICENSING. THIS LICENSE HAS BEEN GRANTED IN RELIANCE ON REPRESENTATIONS MADE BY THE LICENSEE AND OTHERS IN CONNECTION WITH THE APPLICATION FOR EXPORT AND IS EXPRESSLY SUBJECT TO ANY CONDITIONS STATED ON THE LICENSE, AS WELL AS ALL APPLICABLE EXPORT CONTROL LAWS, REGULATIONS, RULES, AND ORDERS. THIS LICENSE IS SUBJECT TO REVISION, SUSPENSION, OR REVOCATION WITHOUT PRIOR NOTICE.

APPLICANT CONTROL NUMBER: 2021776

ALCOA ALUMINA & CHEMICALS, L.L.C.  
425 SIXTH AVENUE, ALCOA BUILDING  
PITTSBURGH, PA 15219-1850

PURCHASER:

ULTIMATE CONSIGNEE:  
SURINAME ALUMINUM COMPANY L.L.C.  
13 V. H. HAGERHUYSSSTRAAT  
PARAMARIBO, SURINAM

INTERMEDIATE CONSIGNEE:

## COMMODITIES:

QTY DESCRIPTION

ECCN

TOTAL  
PRICE

2050 POTASSIUM FLUORIDE - C.A.S. #7789-23-3; 2850 1C350  
KILOGRAMS

\$12,300

TOTAL: \$12,300

THE EXPORT ADMINISTRATION REGULATIONS REQUIRE YOU TO TAKE THE FOLLOWING ACTIONS WHEN EXPORTING UNDER THE AUTHORITY OF THIS LICENSE.

- A. RECORD THE EXPORT COMMODITY CONTROL NUMBER IN THE BLOCK PROVIDED ON EACH SHIPPER'S EXPORT DECLARATION (SED).
- B. RECORD YOUR VALIDATED LICENSE NUMBER IN THE BLOCK PROVIDED ON EACH SED.
- C. PLACE A DESTINATION CONTROL STATEMENT ON ALL BILLS OF LADING, AIRWAY BILLS, AND COMMERCIAL INVOICES.

## RIDERS AND CONDITIONS:

1. APPLICANT MUST INFORM CONSIGNEE OF ALL LICENSE CONDITIONS.
2. NO RESALE, TRANSFER, OR REEXPORT OF THE ITEMS LISTED ON THIS LICENSE

FROM LAURIE R. MANSELL  
LEGAL DEPARTMENT  
PITTSBURGH OFFICE - 13

TO LARRY LANGEVIN  
EXPORT SUPPLY DIVISION  
NEW ORLEANS, LA

DECEMBER 18, 1997

**RE: SURALCO POTASSIUM FLUORIDE LICENSE**

Attached is a copy of Commerce Dept. License #D246750 for the export of 2050 kgs. of potassium fluoride to Suralco. This license expires when either the total quantity allowed under the license has been shipped or on December 31, 1999, whichever occurs first.

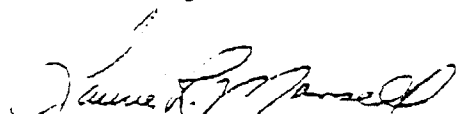
Please note that there are certain requirements to follow when exporting under this license. These requirements are listed on the bottom of the license and include the following:

1. you must record the ECCN (1C350.A.39) in the appropriate block on the SED;
2. you must record the license number (D246750) in the appropriate block in the SED; and
3. you must place a destination control statement on all bills of lading, airway bills and commercial invoices. If you do not already have sample language for this statement, please let me know.

Additionally, the following riders and conditions appear on the license and must be complied with:

1. you must inform Suralco of all of the conditions listed on the license. Please do this in writing and copy me on the memo so that we have a copy for our file.
2. you may not resell, transfer or reexport the potassium fluoride without the authorization of the U.S. Government.
3. the potassium fluoride may not be used in chemical or biological weapons manufacture or applications.

If you have any questions about the license or the restrictions listed on it, please call me in Pittsburgh at X2576.

  
LAURIE R. MANSELL

Attach.

cc: Henry Sands - New Orleans (w/out attach.)  
Michael Scott - Pittsburgh - 13 (w/out attach)



LEGAL DEPARTMENT

EXPORT LICENSE D229683

VALIDATED: MAY 09 1996

EXPIRES: MAY 31 1998



UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF EXPORT ADMINISTRATION  
P.O. Box 273, Ben Franklin Station  
Washington, DC 20044

THIS LICENSE AUTHORIZES THE LICENSEE TO CARRY OUT THE EXPORT TRANSACTION DESCRIBED ON THE LICENSE (INCLUDING ALL ATTACHMENTS). IT MAY NOT BE TRANSFERRED WITHOUT PRIOR WRITTEN APPROVAL OF THE OFFICE OF EXPORT LICENSING. THIS LICENSE HAS BEEN GRANTED IN RELIANCE ON REPRESENTATIONS MADE BY THE LICENSEE AND OTHERS IN CONNECTION WITH THE APPLICATION FOR EXPORT AND IS EXPRESSLY SUBJECT TO ANY CONDITIONS STATED ON THE LICENSE, AS WELL AS ALL APPLICABLE EXPORT CONTROL LAWS, REGULATIONS, RULES, AND ORDERS. THIS LICENSE IS SUBJECT TO REVISION, SUSPENSION, OR REVOCATION WITHOUT PRIOR NOTICE.

APPLICANT CONTROL NUMBER: CS43339

ALCOA ALUMINA & CHEMICALS L.L.C.  
425 SIXTH AVENUE, ALCOA BUILDING  
PITTSBURGH, PA 15219-1850

PURCHASER:

ULTIMATE CONSIGNEE:  
JAMALCO  
13 WATERLOO ROAD  
KINGSTON, JAMAICA

INTERMEDIATE CONSIGNEE:

COMMODITIES:

QTY	DESCRIPTION	ECCN	TOTAL PRICE
1248	KGS, POTASSIUM FLUORIDE, ITEM NO. 39, C.A.S. #7789-23-3.	1C60	\$24,960
TOTAL:			\$24,960

PROCESSING CODE:

THE EXPORT ADMINISTRATION REGULATIONS REQUIRE YOU TO TAKE THE FOLLOWING ACTIONS WHEN EXPORTING UNDER THE AUTHORITY OF THIS LICENSE.

- RECORD THE EXPORT COMMODITY CONTROL NUMBER IN THE BLOCK PROVIDED ON EACH SHIPPER'S EXPORT DECLARATION (SED).
- RECORD YOUR VALIDATED LICENSE NUMBER IN THE BLOCK PROVIDED ON EACH SED.
- PLACE A DESTINATION CONTROL STATEMENT ON ALL BILLS OF LADING, AIRWAY BILLS, AND COMMERCIAL INVOICES.

RIDERS AND CONDITIONS:

- NO USE IN CHEMICAL OR BIOLOGICAL WEAPONS MANUFACTURE OR APPLICATIONS.

EXPORT LICENSE 0229683

VALIDATED: MAY 09 1996

EXPIRES: MAY 31 1998



UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF EXPORT ADMINISTRATION  
P.O. Box 273, San Franklin Station  
Washington, DC 20044

- 
2. APPLICANT MUST INFORM CONSIGNEE OF ALL LICENSE CONDITIONS.
  3. NO RESALE, TRANSFER, OR REEXPORT OF THE ITEMS LISTED ON THIS LICENSE IS AUTHORIZED WITHOUT PRIOR AUTHORIZATION BY THE U.S. GOVERNMENT.

E612-92

FROM MICHAEL D. SCOTT  
LEGAL DEPARTMENT  
PITTSBURGH OFFICE - 1358

TO LARRY LANGEVIN  
EXPORT SUPPLY  
NEW ORLEANS

**VIA FACSIMILE**

MAY 9, 1996

**RE: VALIDATED EXPORT LICENSE AUTHORIZING SHIPMENT OF  
POTASSIUM FLUORIDE TO JAMALCO**

---

Attached is a copy of the validated Export License authorizing the shipment of Potassium Fluoride to Jamalco.

The following requirements **MUST** be observed in connection with any shipments under this license:

- 1) Record the applicable Export Commodity Control Number in the block provided on each SED. - 1C60
- 2) Record the validated license number in the block provided on each SED - D229683
- 3) Place a Destination Control Statement on ALL bills of Lading, Airway Bills and Commercial Invoices:

**"THESE COMMODITIES WERE EXPORTED FROM THE UNITED STATES IN ACCORDANCE WITH THE EXPORT ADMINISTRATION REGULATIONS. DIVERSION CONTRARY TO U.S. LAW IS PROHIBITED."**

Additionally, the license is subject to the following specific conditions:

- a) The potassium fluoride may not be used in chemical or biological weapons manufacture or applications.
- b) Jamalco must be informed of all license conditions.
- c) No resale, transfer or export of the potassium fluoride is authorized without the prior authorization of the US Government.

Condition b) is being accomplished by copy of this memorandum to Mark Keefer & Sonia Dixon at Jamalco.



LEGAL DEPARTMENT



LARRY LANGEVIN


May 9, 1996

PAGE 2

E612-93

The license covers shipments of an aggregate 1248 Kg of potassium fluoride. No shipment under the license may occur after May 31, 1998. Accordingly, you will have to monitor shipments against the license so that an application for a new license can be made well (at least 90 days) in advance of exhaustion of the authorized quantity or expiration of the license.

Please feel free to call me at Pittsburgh Extension 2391 to discuss any aspect the license or shipments under it.



MICHAEL D. SCOTT

MDS:BJS

cc: Henry Sands, New Orleans  
Mark Keefer, Jamalco  
Sonia Dixon, Jamalco  
Peter Bailey, Pittsburgh, 24

EG12-94

UNITED STATES DEPARTMENT OF COMMERCE  
OFFICE OF ADMINISTRATIVE LAW JUDGE  
WASHINGTON, D.C. 20230

In the Matter of:

ALUMINUM COMPANY OF AMERICA  
425 Sixth Avenue  
ALCOA Building  
Pittsburgh, Pennsylvania 15219-1850.

Respondent

NOTICE OF APPEARANCE

Pursuant to 15 C.F.R. § 766.4, Aluminum Company of America (ALCOA) hereby files this Notice of Appearance in the above-captioned administrative proceeding. The Aluminum Company of America is represented in this proceeding by Michael D. Scott of ALCOA, and Edward L. Rubinoff and Samuel C. Straight of Akin, Gump, Strauss, Hauer, & Feld, L.L.P. Michael D. Scott and Edward L. Rubinoff are primarily responsible for this proceeding. Either person may sign pleadings on behalf of ALCOA. Dated this 20th day of January, 1998.

Respectfully Submitted,



Edward L. Rubinoff, R.C.  
Akin, Gump, Strauss, Hauer & Feld, L.L.P.  
1333, New Hampshire Ave., N.W., Ste. 400  
Washington, DC 20036

Michael D. Scott  
Aluminum Company of America  
Room 1358  
425 Sixth Avenue  
ALCOA Building  
Pittsburgh, PA 15219-1850

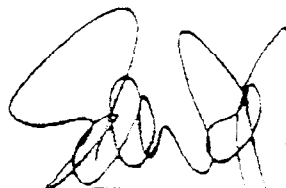
Counsel for Aluminum Company  
of America

E612-95

CERTIFICATE OF SERVICE

I hereby certify that on January 20, 1998, a copy of the foregoing Answer to Charging Letter and Notice of Appearance was served by facsimile transmission and by certified mail addressed to:

Chief Counsel for Export Administration  
Room H-3839  
U.S. Department of Commerce  
14th Street and Constitution Avenue, N.W.  
Washington, D.C. 20230  
ATTN: Jeffrey E.M. Joyner, Esq.



Edward L. Rubinoff, P.C.  
Akin, Gump, Strauss, Hauer & Feld, L.L.P.  
1333 New Hampshire Ave., N.W., Suite 400  
Washington, D.C. 20036

and

Michael D. Scott  
Aluminum Company of America  
Room 1358  
425 Sixth Avenue  
ALCOA Building  
Pittsburgh, PA 15219-1850

Counsel for Aluminum Company  
of America



E612-96  
UNITED STATES DEPARTMENT OF COMMERCE  
Bureau of Export Administration  
Washington, D.C. 20230

DEC 12 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Aluminum Company of America  
425 Sixth Avenue  
ALCOA Building  
Pittsburgh, Pennsylvania 15219-1850

Attention: Paul O'Neill  
Chairman of the Board of Directors and Chief Executive Officer

Dear Mr. O'Neill:

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter "BXA"), hereby charges that the Aluminum Company of America (hereinafter "ALCOA") has violated the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1997)),<sup>1</sup> issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1997)) (hereinafter the "Act"), as set forth below.<sup>2</sup>

Facts constituting violations:

Charges 1-50

As is described in greater detail in Schedule A, which is attached hereto and incorporated herein by reference, on 50 separate occasions between on or about June 14, 1991 and on or about December 7, 1995, ALCOA exported potassium fluoride and sodium fluoride from the

---

<sup>1</sup> The alleged violations occurred between 1991 and 1995. The Regulations governing the violations at issue are found in the 1991, 1992, 1993, 1994, and 1995 versions of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1991-1995)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured: the restructured Regulations, found at 15 C.F.R. Parts 730-774 (1997), establish the procedures that apply to the matters set forth in this Charging Letter.

<sup>2</sup> The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), and August 13, 1997 (62 *Fed. Reg.* 43629, August 15, 1997), continued the Regulations in effect under the International Emergency Economic Powers Act (currently codified at 50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1997)).



United States to Jamaica and Surinam, without obtaining from BXA the validated export licenses required by Section 772.1(b) of the former Regulations. BXA alleges that, by exporting U.S.-origin commodities to any person or to any destination in violation of or contrary to the provisions of the Act or any regulation, order, or license issued thereunder, ALCOA violated Section 787.6 of the former Regulations on 50 separate occasions.

#### Charges 51-100

In connection with the exports described in Charges 1-50 above, on 50 separate occasions between on or about June 14, 1991 and on or about December 7, 1995, ALCOA used Shipper's Export Declarations, export control documents as defined in Section 770.2 of the former Regulations, on which it represented that the commodities described thereon, potassium fluoride and sodium fluoride, qualified for export from the United States to Jamaica and Surinam under general license G-DEST. In fact, those chemicals required a validated license for export from the United States to both of those destinations. BXA alleges that, by making false or misleading statements of material fact directly or indirectly to a United States agency in connection with the use of export control documents to effect exports from the United States, ALCOA violated Section 787.5(a) of the former Regulations on 50 separate occasions.

BXA alleges that ALCOA committed 50 violations of Section 787.5(a) and 50 violations of Section 787.6, for a total of 100 violations of the former Regulations.

Accordingly, ALCOA is hereby notified that an administrative proceeding is instituted against it pursuant to Part 766 of the Regulations for the purpose of obtaining an Order imposing administrative sanctions, including any or all of the following:

- a. The maximum civil penalty of \$10,000 per violation (*see* Section 764.3(a)(1));
- b. Denial of export privileges (*see* Section 764.3(a)(2)); and/or
- c. Exclusion from practice (*see* Section 764.3(a)(3)).

Copies of relevant Parts of the Regulations are enclosed.

If ALCOA fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter as provided in Section 766.6 of the Regulations, that failure will be treated as a default under Section 766.7.

ALCOA is further notified that it is entitled to an agency hearing on the record as provided by Section 13(c) of the Act and Section 766.6 of the Regulations, if a written demand for one is filed with its answer, to be represented by counsel, and to seek settlement of the charges.

Pursuant to an Interagency Agreement between BXA and the U.S. Coast Guard, the U.S. Coast Guard is providing administrative law judge services, to the extent that such services are required under the Regulations, in connection with the matters set forth in this charging letter. Accordingly, ALCOA's answer should be filed with the U.S. Coast Guard ALJ Docketing Center, 40 S. Gay Street, Baltimore, Maryland 21202-4022, in accordance with the instructions in Section 766.5(a) of the Regulations. In addition, a copy of ALCOA's answer should be served on BXA at the address set forth in Section 766.5(b), adding "ATTENTION: Jeffrey E.M. Joyner, Esq." below the address. Mr. Joyner may be contacted by telephone at (202) 482-5311.

Sincerely,



Mark D. Menefee  
Acting Director  
Office of Export Enforcement

Enclosures

SCHEDULE A  
ALLEGED VIOLATIONS OF SECTIONS 787.5(a) AND 787.6

ALUMINUM COMPANY OF AMERICA

CHARGE NO.	DATE	COMMODITY	DESTINATION	QUANTITY
1. 51.	06/14/91	Potassium Fluoride	Jamaica	118 KG
2. 52.	07/18/91	Potassium Fluoride	Jamaica	63 KG
3. 53.	09/09/91	Potassium Fluoride	Jamaica	113 KG
4. 54.	09/24/91	Potassium Fluoride	Jamaica	71 KG
5. 55.	10/16/91	Potassium Fluoride	Jamaica	121 KG
6. 56.	12/02/91	Potassium Fluoride	Surinam	272 KG
7. 57.	12/05/91	Potassium Fluoride	Jamaica	170 KG
8. 58.	12/23/91	Potassium Fluoride	Jamaica	82 KG
9. 59.	01/15/92	Potassium Fluoride	Jamaica	109 KG
10. 60.	01/23/92	Potassium Fluoride	Jamaica	395 KG
11. 61.	02/07/92	Potassium Fluoride	Jamaica	142 KG

CHARGE NO.	DATE	COMMODITY	DESTINATION	QUANTITY
12. 62.	03/17/92	Potassium Fluoride	Jamaica	134 KG
13. 63.	03/17/92	Potassium Fluoride	Jamaica	227 KG
14. 64.	04/29/92	Potassium Fluoride	Jamaica	82 KG
15. 65.	04/30/92	Sodium Fluoride	Surinam	1225 KG
16. 66.	07/11/92	Potassium Fluoride	Surinam	272 KG
17. 67.	08/05/92	Potassium Fluoride	Jamaica	125 KG
18. 68.	10/07/92	Potassium Fluoride	Jamaica	136 KG
19. 69.	11/25/92	Potassium Fluoride	Jamaica	136 KG
20. 70.	01/15/93	Potassium Fluoride	Jamaica	136 KG
21. 71.	02/01/93	Potassium Fluoride	Jamaica	136 KG
22. 72.	03/11/93	Potassium Fluoride	Jamaica	136 KG
23. 73.	03/24/93	Potassium Fluoride	Jamaica	136 KG



CHARGE NO.	DATE	COMMODITY	DESTINATION	QUANTITY
24. 74	04/01/93	Potassium Fluoride	Jamaica	113 KG
25. 75	04/20/93	Potassium Fluoride	Jamaica	159 KG
26. 76	04/26/93	Potassium Fluoride	Surinam	272 KG
27. 77	06/04/93	Potassium Fluoride	Jamaica	272 KG
28. 78	06/23/93	Potassium Fluoride	Jamaica	130 KG
29. 79	11/01/93	Potassium Fluoride	Surinam	287 KG
30. 80	12/13/93	Potassium Fluoride	Jamaica	136 KG
31. 81	12/21/93	Sodium Fluoride	Surinam	1134 KG
32. 82	12/30/93	Potassium Fluoride	Jamaica	91 KG
33. 83	02/21/94	Potassium Fluoride	Jamaica	57 KG
34. 84	06/03/94	Potassium Fluoride	Jamaica	59 KG
35. 85	08/17/94	Potassium Fluoride	Surinam	287 KG

CHARGE NO.	DATE	COMMODITY	DESTINATION	QUANTITY
36. 36.	08/19/94	Potassium Fluoride	Jamaica	52 KG
37. 87.	09/07/94	Sodium Fluoride	Surinam	1249 KG
38. 38.	09/19/94	Potassium Fluoride	Jamaica	36 KG
39. 39.	09/27/94	Potassium Fluoride	Jamaica	125 KG
40. 90.	10/27/94	Potassium Fluoride	Jamaica	68 KG
41. 91.	12/29/94	Potassium Fluoride	Jamaica	70 KG
42. 92.	02/10/95	Potassium Fluoride	Jamaica	70 KG
43. 93.	02/22/95	Potassium Fluoride	Jamaica	113 KG
44. 94.	03/27/95	Potassium Fluoride	Jamaica	54 KG
45. 95.	04/25/95	Potassium Fluoride	Jamaica	73 KG
46. 96.	06/21/95	Potassium Fluoride	Jamaica	73 KG
47. 97.	08/30/95	Potassium Fluoride	Jamaica	59 KG

CHARGE NO.	DATE	COMMODITY	DESTINATION	QUANTITY
48. 98.	10/02/95	Potassium Fluoride	Jamaica	73 KG
49. 99.	11/21/95	Potassium Fluoride	Jamaica	52 KG
50. 100.	12/07/95	Potassium Fluoride	Surinam	287 KG